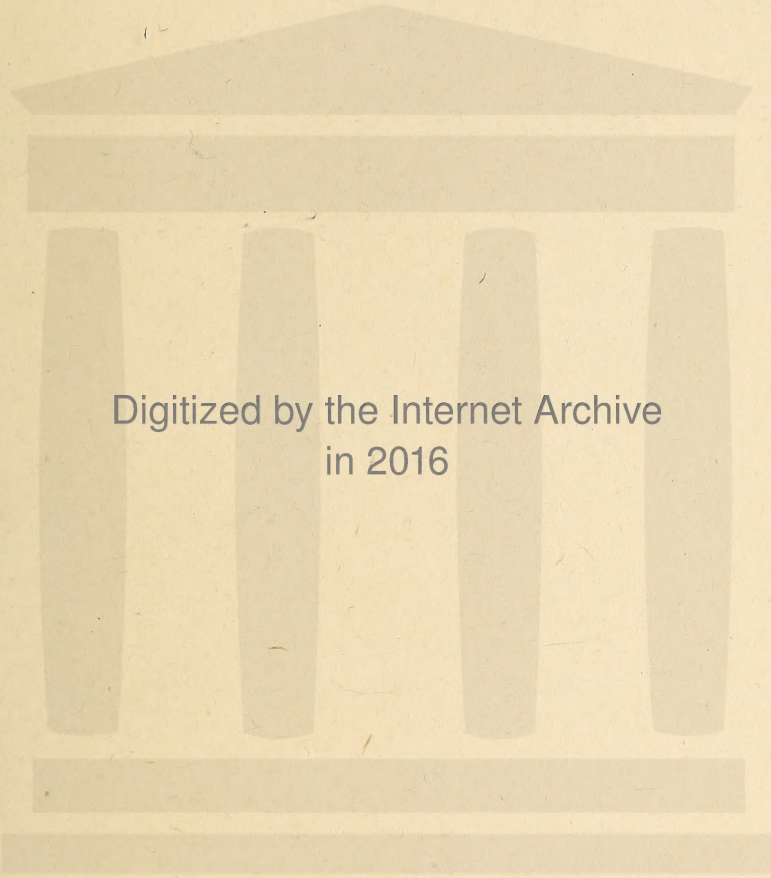


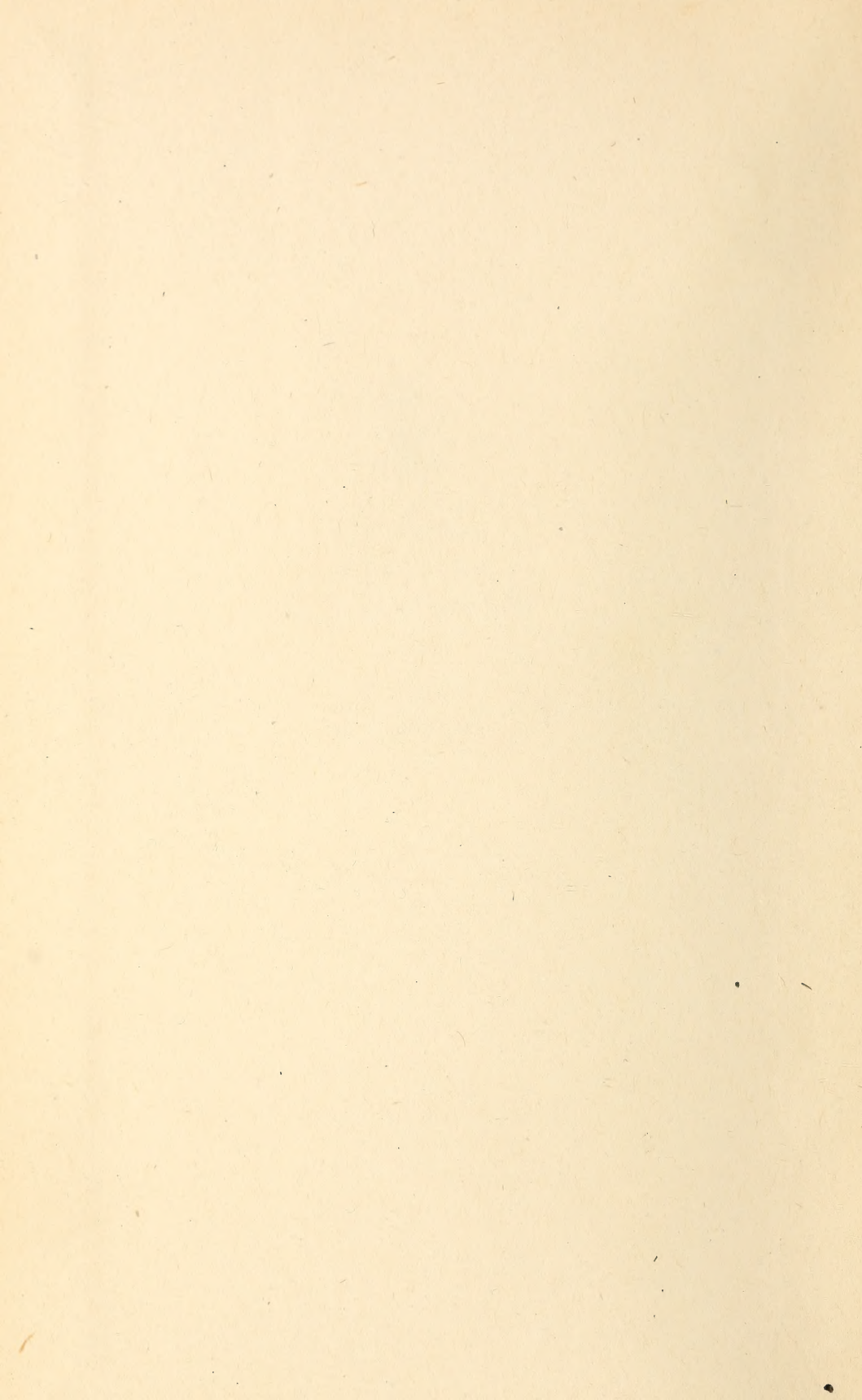
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FOURTEENTH REPORT
OF THE
BUREAU OF ARCHIVES
FOR THE
PROVINCE OF ONTARIO

BY
ALEXANDER FRASER, M.A., LL.D., Litt. D., F.S.A. Scot. (Edin.), etc.
Provincial Archivist

1917

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THE LEGISLATIVE ASSEMBLY OF ONTARIO



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1918

*To His Honour COLONEL SIR JOHN STRATHEARN HENDRIE, K.C.M.G.,
C.V.O., LL.D., etc.,*

Lieutenant-Governor of the Province of Ontario.

MAY IT PLEASE YOUR HONOUR:

I have pleasure to present herewith for the consideration of Your Honour the Report of the Bureau of Archives for Ontario for 1917.

Respectfully submitted,

THOS. W. MCGARRY,

Treasurer of Ontario.

Toronto, 1918.

The Honourable THOMAS W. MCGARRY, ESQ., K.C., M.P.P., ETC.

Treasurer of Ontario.

SIR,—I have the honour to submit the following Report in connection with the Bureau of Archives for the Province of Ontario for 1917.

I have the honour to be, Sir,

Your obedient servant,

ALEXANDER FRASER,

Provincial Archivist.

Toronto, 31st December, 1917.

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EX REBUS ANTIQUIS ERUDITIS ORIATUR

Report

OF THE

Ontario Bureau of Archives

PREFATORY

The records of the early courts of Upper Canada were transferred to the custody of the Ontario Department of Archives under provision of 10 Edw. VII., c. 26, with the view of publication. A first instalment is accordingly given in this volume. They had long been given up as irrecoverably lost, and the story of their finding is told in the following letter by the undersigned, read at a meeting of the Michigan State Bar:—

“In the summer of 1910, Mr. C. M. Burton, of Detroit, a public-spirited investigator of the history of the State of Michigan, and especially of the early days of Detroit, called on me in Toronto and expressed a desire to see the vaults at Osgoode Hall, the home of the High Courts of Ontario. Mr. Burton had asked me before this time to enquire at Osgoode Hall for the records of the Court of Common Pleas for the District of Hesse, or the Western District, which at one time included Detroit. The records had been sought for years in likely and unlikely places, including Osgoode Hall, but could not be found. At his request, I repeated the enquiry, but the oldest of the officials, for fifty-one years the custodian of the oldest vault, knew nothing of them, and stated that two systematic searches at the request of the Attorney General's Office had been made many years before without avail.

“Mr. Burton's immediate object on the occasion of his visit, however, was to observe the method in use for filing papers preserved. At that time there were no electric lights in the vaults, and lamps were forbidden because of the possibility of accidental explosion. The languid flame of a tallow candle sufficed to show the way, though not to shed sufficient light on the dust-begrimed pigeon-holes. Mr. Burton noticed a book of ancient appearance on the top shelf that aroused his curiosity. To get it for him, I climbed on an uncovered deal box filled with old papers that lay on the floor, and reached the volume. The book proved to be one into which letters of the early 'eighties had been copied by letter press—of no apparent record value. Stepping down I upset the deal box, emptying the contents on the floor. Proceeding to replace the papers, the first article picked up was a paper-covered volume similar to the old-fashioned books sometimes used by the township valuers

of long ago. My astonishment may be imagined when I discovered that the book was one of the long lost Minute Books of the Court of Common Pleas of the Western District, and there on the first page was the name of the 'First Judge,' the Honourable Wm. Dummer Powell. Mr. Burton and Mr. Jackson were standing near me in the narrow vault, the latter holding the candle and telling the Detroit visitor of the age and glory of Osgoode Hall. I suppressed my rising feelings until all the papers had been put back in the box except eight thin folios, one after another of which I had rescued from the orderless heap, tattered, and apparently useless, but in reality of priceless value, being the original records of our oldest constituted Courts for the old Districts of Hesse, Mecklenburg and Lunenburg in Upper Canada.

"I asked Mr. Burton to look at one of the books, remarking that he might feel interested in it. He opened it, and when he saw the holograph of John Munro, a relative, on one of the pages he gave up the effort to appear calm, and in the circumstances was to be excused for having always known that the precious records were there."

In going over the Term Books of the Court of King's Bench, in 1913, the first volume of the Records of the Court of Common Pleas for Hesse, dating from 1789, was found by the Honourable Mr. Justice Riddell, whose learned Introduction and Notes render it unnecessary, here, to refer to the rare value of these documents. When the succeeding instalments shall have been published a rich vein, practically untouched, will be, for the first time, open for historical research to the student, not only of our legal institutions, but also of certain important conditions and customs of pioneer life in Upper Canada.

ALEXANDER FRASER.

RECORDS

OF THE

Early Courts of Justice

OF

UPPER CANADA

INTRODUCTION.

When in 1760 the conquest of Canada by Britain was complete, what became, thirty-two years afterwards, the Province of Upper Canada and is now the Province of Ontario, was practically destitute of inhabitants, except the Indian tribes, and a very few French settlers on the left shore of the River Detroit, the territory however passed by the Capitulation. All Canada was under a species of military rule till 1763.

In 1763, the Treaty of Paris confirmed the British ownership of Canada, making the sovereignty *de jure* which had theretofore been *de facto*. On October 7, 1763, a Royal proclamation was issued forming out of the territory recently acquired in North America and adjacent Islands, four "Governments;" the only one with which we have here concern was the "Government of Quebec." This was "bounded on the Labrador coast by the River St. John, and from thence by a line drawn from the head of that River through the Lake St. John to the south end of the River Nippissim, from whence the said Line crossing the River St. Lawrence and the Lake Champlain in 45 Degrees of north latitude passes along the high lands, which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the sea; and also along the north coast to the Baye des Chaleurs and the coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the mouth of the River St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River St. John." ⁽¹⁾ It is probable that those who drew this description had no clear conception of the geography of Canada. At all events the boundary, "the high lands" which divide the rivers which empty themselves into the St. Lawrence from those which fall into the sea, was the cause of much difficulty when later on the same boundary was used to divide the United States from British territory in the treaty of 1783, the difficulty being terminated only by the Ashburton Treaty of 1842. But the new Government, or Province of Quebec, undoubtedly contained all the territory afterwards the Province of Upper Canada.

This Royal proclamation further stated that the Governors had been instructed to call General Assemblies, which with the Governors and Councils should "Make, constitute and ordain laws, statutes and ordinances for the public peace, welfare and good government of our said colonies . . . as near as may be agreeable to the laws of England . . . and in the meantime, and until such assemblies can be called . . . all persons inhabiting in or resorting to our said colonies may confide in our royal protection for the enjoyment of the benefit of the laws of our realm of England."

This introduction of the laws of England was unobjectionable in the other three governments, or nearly so, but in Canada there was a large and homogeneous French population wedded to its own laws and customs. The criminal law of England the French-Canadian did not object to; savage as it was, it was less so than his own, but the English law in civil matters he never willingly accepted. He much preferred and he insisted on having his own law, based chiefly on the *coutume de Paris*, and ultimately on the civil law of

⁽¹⁾ For References see page 22, Introduction.

Rome; he could not, for example, understand how the English thought their property safer in the determination of tailors and shoemakers than in that of their judges.

There ensued an agitation for the restitution of the French-Canadian law, which continued more or less lively until it was ultimately successful. But there was also a steady counter-movement on the part of the "old subjects," i.e., those who had come from the British Isles or the British American colonies. Many of these had come to Canada (and more perhaps affected to have come) relying upon the promise contained in the royal proclamation of 1763 that all resorting to the new Government might confide in protection for the enjoyment of the laws of England. Many of the "old subjects" also clamored for the calling of a General Assembly which had been (in effect) promised in the proclamation. While there were exceptions on both sides, it may be said generally that the English-speaking "old subjects" desired a Legislative Assembly and the retention of the English civil law, the French-speaking "new subjects" had no desire for an Assembly and desired the return of their former civil law. After much consideration and balancing of advantages, it was decided to yield to the desires of the French-Canadians; and in 1774 the celebrated Quebec Act was passed by the Imperial Parliament ⁽²⁾.

The Quebec Act, by section 4, provided that the Royal proclamation of 1763, so far as it related to the Province of Quebec, the Governor's commission and all ordinances relative to the civil government and administration of justice in the Province should be revoked, annulled and made void from and after May 1, 1775. Section 8 provided that "all His Majesty's Canadian subjects within the Province of Quebec . . . may . . . hold and enjoy their property and possessions, together with all customs and usages relative thereto, and all other their civil rights in as large, ample and beneficial manner as if the said proclamation, commissions, ordinances and other acts and instruments had not been made . . . and that in all matters of controversy relative to property and civil rights, resort should be had to the laws of Canada as the rule for the decision of the same . . ." (an exception being made of lands granted or to be granted in free and common soccage, the ordinary English tenure).

Section II reciting that "the certainty and lenity of the criminal law of England, and the benefit and advantages resulting from the use of it, have been sensibly felt by the inhabitants" provided "that the same shall continue to be administered and shall be observed as law in the Province of Quebec."

Section 12 recited that "it is for the present inexpedient to call an Assembly" and gave power to a Council which was to be appointed to make "ordinances for the peace, welfare and good government of the . . . province with the consent of His Majesty's Governor."

This Act was received with acclaim by the French-Canadians, but most of the English-speaking inhabitants of the province strongly objected to it. The American Revolution for a time prevented much being done by the English-speaking, but they were never reconciled to the change.

An agitation sometimes more, sometimes less animated was kept up for an Assembly; the return of the English law was also demanded and even

more insistently than an Assembly. In 1791 was passed the Canada Act, or Constitutional Act. Section 2, after reciting the Royal intention to divide the Province of Quebec into two provinces, to be called the Province of Upper Canada and the Province of Lower Canada, recited that there should be in each province a Legislative Council appointed and an Assembly elected which should have power "to make laws for the peace, welfare and good government thereof." Section 33 provided that "all laws, statutes and ordinances which shall be in force on the day to be fixed . . . for the commencement of this Act, within the said provinces or either of them, or in any part thereof . . . shall remain and continue to be of the same force, authority and effect in each of the said provinces respectively as if this Act had not been made . . . and except in so far as the same are expressly repealed or varied by this Act or in so far as the same shall or may hereafter by virtue of . . . this Act be repealed or varied by His Majesty, his heirs or successors by and with the advice and consent of the Legislative Councils and Assemblies of the said provinces respectively . . ." in other words the laws should remain until changed by the parliaments of the provinces, each province to act independently of the other. The first Parliament in Upper Canada met at Newark (now Niagara-on-the-Lake) and in its first Act ⁽³⁾ enacted "that from and after the passing of this Act the . . . provision (that in all matters of controversy relative to property and civil rights, resort should be had to the laws of Canada as the rule for the decision of the same) contained in the (Quebec) Act be and the same is hereby repealed, and the authority of the said laws of Canada and every part thereof as forming a rule of decision in all matters of controversy relative to property and civil rights shall be annulled, made void and abolished throughout this province . . ." Section 3 provided "that from and after the passing of this Act, in all matters of controversy relative to property and civil rights resort shall be had to the laws of England as the rule for the decision of the same." Section 6 negatived the introduction of "any of the laws of England respecting the maintenance of the poor, or respecting bankrupts."

No such repeal of the provisions of the Quebec Act was passed by the Parliament of Lower Canada.

The effect is that in both this province and in Lower Canada (or Quebec) the criminal law is the criminal law of England as it existed in 1774, modified by legislation in the old Province of Quebec before 1792 and by the legislature of the provinces respectively from 1792 till 1849, by the Province of Canada from 1841 till 1866 and since July 1, 1867, by the Dominion of Canada, in some cases by the Province of Ontario. The law in civil matters in this province is the law of England (with certain statutory exceptions)¹ as it existed October 15, 1792, when the Statute of 1792 was assented to by the Lieutenant-Governor, John Graves Simcoe, ⁽⁴⁾ modified by the legislation of the Parliament of Upper Canada, 1792-1840; of the Province of Canada, 1841-1866, and since July 1, 1867, of the Province of Ontario and in certain matters of the Dominion of Canada ⁽⁵⁾.

The description given in the proclamation of 1763 of the Government of Quebec is vague in some respects. It was, however, considered to include much if not all of what is now Michigan, Wisconsin, Illinois and Indiana.

Detroit and Michilimacinae were taken possession of, and had Governors or Lieutenant-Governors subordinate to the authorities at Quebec; the chief settlements further south were at Vincennes, on the Wabash and Kosciskia on the Mississippi, near the mouth of the Kosciskia River (washed away in 1860) (⁶).

In the older settled parts, under the French rule, Canada had been divided for administrative purposes into three districts, Quebec, Three Rivers and Montreal. These were retained by the conquerors; but when the time came for purely civil administration the District of Three Rivers disappeared and the province was in 1764 divided into two districts, those of Quebec and Montreal, "bounded by the River Godfroy on the south and by the River St. Maurice on the north side." This, of course, means by the River Godfroy on the south side of the St. Lawrence and on the north side of the St. Lawrence by the River St. Maurice. The District of Montreal stretched to the west as far as the Province of Quebec, i.e., Canada extended. This was not satisfactory; even before the Declaration of Independence it was contemplated to form five new districts, at "the Illinois, St. Vincennes, Detroit, Missilimakinac and Gaspée" respectively, and Sir Guy Carleton, the first Governor after the passing of the Quebec Act, was in 1775 instructed in that sense.

This scheme came to naught. The American revolution had a rapid and unexpected success. The celebrated George Rogers Clark captured Kosciskia for the Colonists in 1778, Vincennes fell the following year, and the fate of "the Illinois" was settled (⁷). The whole West was in turmoil. More than once Detroit and Michilimacinae were in peril *inter arma silent leges* and there was neither time nor money to erect new institutions.

Then came the treaty of peace in 1783, which awarded to the United States all the territory south of the great lakes and to the right of the middle line of these connecting waters. Detroit and Michilimacinae were also lost to Britain. Nothing came of the project, but the Western country continued to fill up, and it was exceedingly inconvenient to have all the litigation of that enormous territory required to come to Montreal for trial. The cost was almost prohibitive, and the result was that justice was delayed and in many cases actually denied against the provisions of Magna Charta.

Detroit and Michilimacinae had not been given up by the British in pursuance of Article II of the Treaty of Paris, 1763 (⁸). Detroit at least was a busy place and considerable litigation originated there.

The Royal Instructions to Sir Guy Carleton, now Lord Dorchester, of August 23rd, 1786, contemplated a new district at Detroit but nothing was done for a time, but a patent was issued under the Great Seal of the Province, July 29, 1788, forming five new districts, one the District of Gaspé, and four west of the Ottawa River in what is now Ontario. These districts were Luneburg, Mecklenburg, Nassau and Hesse.

The districts were arranged in great measure about the centres of immigration and population, Luneburg (not Lunenburg or Lunenburgh) had what is now Cornwall as its nucleus, Mecklenburgh, had Kingston (or Cataraqui), Nassau, Niagara (Newark) and Hesse, Detroit. It is quite true that in legal strictness, Hesse could not contain Detroit, as that was American territory, but Britain still held it and exercised control and

ownership over it, and therefore a British governor must needs look upon it as British territory.

All was so far in the Province of Quebec; but a message was sent to the Imperial Parliament (February 25, 1791) expressing the Royal intention to divide the Province of Quebec into two separate provinces, the province of Upper Canada and that of Lower Canada. After the passing of the Canada Act, an Order in Council was passed dividing the Province of Quebec accordingly, and directing a royal warrant to issue to authorize the Governor or Lieutenant-Governor of the Province of Quebec to fix such day for the commencement of the effect of the Canada Act in the new provinces. A royal warrant issued to Lord Dorchester authorizing him to fix such day. He did not go at once to Canada, and General Alured Clarke, Lieutenant-Governor, issued November 18, 1791, a proclamation fixing Monday, December 26, 1791, as the day. The provinces were technically and in law formed August 24, 1791, by the Order in Council, but there was no change in fact till after December 26, 1791. The province of Upper Canada received the four districts of Lunenburg, Mecklenburg, Nassau and Hesse; these names were changed in 1792 by provincial statute to Eastern, Midland, Home and Western.

Immediately after the conquest courts were established by the conqueror—these, some of which were more or less military in their character were temporary only and disappeared shortly after the possession of the country was legalized by the treaty of Utrecht, 1763, and no further attention need be paid to them.

The Quebec Act of 1774 abolished as of May 1, 1775, an existing ordinance revoking all commissions to judges, etc., and generally destroyed the existing system. The courts, then, which had been formed before the passing of the Quebec Act, did not continue, and mention of them is made simply to complete the story. As we have seen, the law of England was introduced by the Royal proclamation of 1763, both civil and criminal; but the Quebec Act in 1774 reintroducing the Canadian Civil law, leaving the criminal law of England still in force, it will therefore be convenient to consider the courts of civil jurisdiction and those of criminal jurisdiction separately.

A. COURTS OF CRIMINAL JURISDICTION: The proclamation stated "We have given power under our Great Seal to the Governor of our said colonies respectively to erect and constitute with the advice of our said councils respectively, courts of judicature and public justice within our said colonies for hearing and determining all causes as well criminal as civil, according to law and equity, and as near as may be agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentences of such courts in all civil cases, to appeal, under the usual limitations and restrictions, to us in our Privy Council." (9).

The King alone has the right of erecting courts of judicature; but he may give this right to any of his servants singly or collectively. The King's commission to General James Murray creating him "Captain General and Governor in Chief in and over our Province of Quebec in America," gave him "full power and authority, with the advice and consent of our said council, to erect, constitute and establish such and so many courts of judicature and

publick justice within our said province under your government as you and they may think fit and necessary for the hearing and determining of all causes as well criminal as civil according to law and equity and to constitute and appoint judges and in all cases requisite commissioners of Oyer and Terminer, Justices of the Peace, Sheriffs and other necessary officers and ministers in our said province for the better administration of justice and putting the laws in execution" The Royal Instructions to Murray, section 16, provide "And whereas by our commission you are authorized and empowered, with the advice and consent of our council, to constitute and appoint courts of judicature and justice; it is therefore our will and pleasure that you do as soon as possible, apply your attention to these great and important objects." He was particularly instructed, section 22, "to take especial care that in all courts where you are authorized to preside, justice be impartially administered; and that in all other courts established within our said province, all judges and other persons therein concerned do likewise perform their several duties without any delay or partiality."

The Governor and Council did not delay (there was no Legislative Assembly, and the Parliament was composed of Governor and Council only). They could not act immediately—the Treaty of Paris (October 8, 1763) had specified that French-Canadians were to be allowed eighteen months to leave Canada if they so desired. Accordingly, civil government was not actually established in Quebec until August 10, 1764, but on September 7, 1764, an ordinance was passed which in addition to a court of purely civil jurisdiction (which is passed over for the moment) established a "Superior Court of Judicature or Court of King's Bench to sit and hold terms in the Town of Quebec twice in every year, viz.: one to begin on the 21st day of January, called Hillary Term, the other the 21st day of June, called Trinity Term." In this court the Chief Justice of the province was to preside "with power and authority to hear and determine all criminal and all civil causes agreeable to the laws of England and to the ordinances of this province in all tryals in this court, all His Majesty's subjects in this colony to be admitted on juries without distinction."

It was also provided that "His Majesty's Chief Justice once in every year should hold a court of assize and general gaol delivery soon after Hillary Term, at the towns of Montreal and Trois-Rivières for the more easy and convenient distribution of justice to His Majesty's subjects in those distant parts of the province."

Inferior courts of criminal jurisdiction are contemplated, the courts of quarter sessions: as there was not at the time "a sufficient number of Protestant subjects resident in the intended district of Trois-Rivières qualified to be Justices of the Peace and to hold Quarter Sessions" it was ordained that the province should "until there may be a sufficient number of persons settled at or near Trois-Rivières duly qualified to execute the office of Justices of the Peace and the power of holding such Quarter Sessions (or until His Majesty's pleasure be known in that behalf)" there should be only two districts in the province, the districts of Quebec and Montreal divided by the rivers Godfroy and St. Maurice. Justices of the Peace who formed the Courts of Quarter Sessions (or Quarter Sessions of the Peace) or Sessions

or Sessions of the Peace) had also certain powers in criminal matters "out of sessions," that is, sitting apart from the mass of their fellow Justices of the Peace. There were thus four courts of criminal jurisdiction (a) the Court of King's Bench, (b) a Court of General Gaol Delivery, (c) Quarter Sessions in each of the two Districts, and (d) Justices of the Peace out of Quarter Sessions in each District.

To understand these fully the contemporary English law must be considered.

(a) The Court of King's Bench in England was historically a portion of the Curia Regis, Aula Regis, or Council of the King. At this time it had in addition to civil jurisdiction on its *plea* side (which will be passed over for the moment), also on its crown side "full cognizance of all criminal causes from high treason down to the most trivial misdemeanour or breach of the peace." The judges of the court are the supreme coroners of the kingdom, and are Justices of the Peace *ex officio*. They like the other King's Courts at first generally followed the King wherever he might be in his kingdom. By chapter 17 of Magna Charta it was agreed that "Common pleas shall not follow our Court, but shall be held in some fixed place," and thereafter the Court of Common Pleas, which had already ceased in great measure to follow the King's Court and had established itself at Westminster, continued to sit at Westminster and at Westminster only. But no such provision was made for the Court of King's Bench. For some years, however, the Court of King's Bench also held its sittings at Westminster; but in 1234, Henry III began to have it follow in his train, holding its sittings where he might be for the time being. This practice was followed by his son and successor, Edward I, who in 1300 ordered the justices of his bench to follow him; and it was not till some years later that the Court of King's Bench came to have its sittings permanently in Westminster. Even then there was no prohibition, statutory or otherwise, against it sitting elsewhere, and it is known that it did so occasionally, e.g., it removed to Oxford in 1665 on account of the plague; but in general, the court did not sit elsewhere than in Westminster.

Every Englishman had a right to be tried by his peers and by a jury of "the vicinage," i.e., a jury of the county in which the alleged offence was committed. Accordingly, when a case was to be tried, a jury of the county had to be called; to send a jury from a remote county to Westminster was as intolerable a burden as it would be to have all accused persons sent there for trial. This, however, was done when the case was to be tried by the Court of King's Bench at Westminster and a similar inconvenience was experienced when the court was peripatetic.

Accordingly, very early, commissions were issued for the holding of courts of Oyer and Terminer and courts of General Gaol and courts of General Gaol Delivery for the trial of alleged crimes in or near the place of their occurrence. The commission of Oyer and Terminer authorized the persons named in the commission to try all cases in which the indictments had been found before them; that of General Gaol Delivery authorized them to try all cases of crime alleged against anyone in the gaol of the place named in the commission. From and after 1328, at the latest, commissions of Oyer and Terminer and of General Gaol Delivery regularly issued to

Judges of Assize and formed part of the authority under which they performed their office.

(b) The court of General Gaol Delivery is the court held under the commission of General Gaol Delivery. In the new Province of Quebec, there was to be one held by the Chief Justice of the province with the Court of Assize in Montreal once a year. There was no need of a Court of General Gaol Delivery at Quebec; the Court of King's Bench sat there as the Court of King's Bench, just as the English Court of King's Bench sat at Westminster, and in certain cases tried criminal cases there.

(c) The Courts of Quarter Sessions were holden by Justices of the Peace. Justices of the Peace date back to the time of Edward III and were first "assigned" under the statute of 1327. Within three years their power to receive indictments was acknowledged, but while some of them seem to have been included in commissions of Oyer and Terminer and General Gaol Delivery, it was not till 1344 that they obtained any judicial power; in 1350 they were required to hold their sessions in every county four times a year, and at all times needful to enforce the Statute of Labourers, and in 1360 they received authority "to hear and determine at the King's suit all manner of felonies and trespasses done in the same county." Ever since there have been meetings in each county of the Justices of the Peace in their sessions which were called Quarter Sessions, as they met four times in every year.

At the time now under discussion the Court of Quarter Sessions, while it had in theory the right to try all felonies, had ceased to exercise that power in cases involving the death penalty. There is no doubt that as late as the 16th century many persons were hanged on the sentence of the Quarter Sessions, but in Blackstone's time he informs us "they seldom if ever try any greater offences than small felonies within the benefit of clergy, their commission providing that if any case of difficulty arises they shall not proceed to judgment but in the presence of one of the justices of the Court of King's Bench or Common Pleas or one of the judges of Assize, and therefore murders and other capital felonies are usually remitted for a more solemn trial to the assizes." The form of the commission of the peace at the time would now be considered curious. It gave the Justices of the peace (in their Sessions) power to enquire by the oath of good and lawful men of their county "of all and all manner of felonies, poisonings, enchantments, sorceries, arts, magic, trespasses, forestallings, regratings, ingrossings and extortions whatsoever. And of all and singular other crimes and offences, etc., and also of all those who have there lain in wait or hereafter shall presume to lie in wait to maim or cut or kill our people. And also of all victuallers and all and singular other persons who in the abuse of weights and measures or in setting victuals against the form of the ordinances and statutes . . . have offended or attempted . . . and the same offenders and every of them for their offences by fines, ransoms, amerciaments, forfeitures and other means . . . to chastise and offend."

(d) Justices of the Peace, in addition to trying with a jury at their Quarter Sessions, had the power, sometimes one alone, sometimes two together, to try certain inferior offences without a jury. These powers were generally given by statute, and are too numerous to be here enumerated. Where two

or more Justices of the Peace met (not in the Quarter Sessions) for the execution of some power vested in them by law, the meeting was called a Petty or Petit Session, while a Special Session was a meeting holden on a special occasion for the execution of some particular branch of their authority.

Before leaving the criminal courts it should be said that the Court of King's Bench had a kind of supervision over all the lower courts; proceedings in all inferior courts could be removed into the Court of King's Bench as proper cases by a writ of *certiorari*.

B. CIVIL COURTS: It has already been stated that the Superior Court of Judicature—Court of King's Bench, erected by the ordinance we have been considering, had jurisdiction in all civil as well as in all criminal causes. The Chief Justice of the Province, in addition to presiding in the Court of King's Bench, also held a Court of Assize at Montreal and Three Rivers once a year. This court tried but did not deliver judgment in cases in the Court of King's Bench coming from these places. But there was another court instituted by that ordinance, "an inferior Court of Judicature or Court of Common Pleas . . . with power and authority to determine all property above the value of ten pounds, with a liberty of appeal to either party to the Superior Court or Court of King's Bench where the matter in contest is of the value of twenty pounds or upwards. All tryals in this court to be by juries if demanded by either party; and the court to sit and hold two terms in every year at the town of Quebec at the same time with the Superior Court or Court of King's Bench. Where the matter in contest in this court is above the value of three hundred pounds sterling, either party may (if they think proper) appeal to the Governor and Council immediately, and from the Governor and Council an appeal lies to the King and Council, where the matter in contest is of the value of five hundred pounds sterling or upwards.

"The judges in this court are to determine agreeable to equity, having regard nevertheless to the laws of England as far as circumstances and present situation of things will admit, until such time as proper ordinances for the information of the people can be established by the Governor and Council agreeable to the laws of England. The French laws and customs to be allowed and admitted in all causes in this court between the natives of this province where the cause of action arose before the first day of October, 1764. Canadian Advocates, Proctors, etc., may practice in this court."

A fourth kind of civil court erected by this ordinance was the Quarter Sessions in each district. The Justices of the Peace of each district were given power to hold Quarter Sessions in their respective districts every three months in every year, three justices to be a quorum; at these courts were heard and determined "all causes and matters of property which shall be above the sum of £10 (\$40.00) and not exceeding £30 (\$120.00) current money of Quebec, with liberty to appeal to either party to the Superior Court or Court of King's Bench."

The right of appeal is given in cases in the Quarter Sessions of £10 Quebec currency and over; in the Common Pleas of £20 (probably Quebec currency).

The fifth and last kind of Court of Civil Jurisdiction erected by this ordinance was that of Justices of the Peace in each district. Any one Justice of the Peace could hear and determine (within his district) all causes or matters of property not exceeding £5 (\$20.00) Quebec currency, and any two all causes or matters of property not exceeding £10 (\$40.00) no appeal being allowed in either case.

The courts, then, of Civil Jurisdiction were (a) the Court of King's Bench sitting at Quebec twice a year; (b) the Court of Assize sitting at Montreal and Three Rivers once a year; (c) the Court of Common Pleas sitting at Quebec twice a year; (d) two Courts of Quarter Sessions sitting at Quebec and Montreal respectively four times a year; (e) an indefinite number of Justices of the Peace courts, sitting where and when convenient.

(a) The Quebec Court of King's Bench had for its prototype the Court of King's Bench in England which had civil as well as criminal jurisdiction. When the Court of Common Pleas (or Common Bench) split off from the remainder of the Aula Regis it took with it the jurisdiction over real actions, that is, actions which concern the right of freehold or the realty, and over these it retained exclusive jurisdiction. But while the Court of Common Pleas had jurisdiction over all other pleas between man and man, the Court of King's Bench also asserted jurisdiction over many of these also—it took “cognizance of all actions of trespass or other injury alleged to be committed *vi et armis* (with force of arms) of actions for forgery of deeds, maintenance, conspiracy, deceit and actions on the case which allege any falsity or fraud; all which savour of a criminal nature.”

Long before the times of which we are now writing, the Court of King's Bench had acquired jurisdiction over all kinds of personal actions, and while it never entertained what were technically known as real actions, the title to land could be tried in this court by the operation of certain legal fictions, so that for all practical purposes the Court of King's Bench had at this time in England full civil as well as full criminal jurisdiction.

The Quebec Court of King's Bench was given the like power. All cases in the new court were to be tried by a jury and decided according to the Laws of England and the ordinances of the province.

(b) There is no need of going into the most remote history of the English Courts; 1285 is sufficiently far back.

When the pleadings in the Court of King's Bench or the Court of Common Pleas were completed, and it was known what was to be tried, it might be that a trial at bar was ordered, i.e., a trial before the court itself at Westminster or wherever the court sat. This necessitated sending a jury of the vicinage up to Westminster, an unreasonable burden for those in distant parts of the realm.

By the Statute of Westminster, 2nd, it was provided in 1285 that two justices should be assigned, before whom and no other Assizes of Novel Disseisin, Mort-d'ancestor and Attaints should be taken, and that these should take the Assizes and Attaints, not more than three times in the year. When the trials were had the records were to be returned into the court whence they came and judgment was entered in that court.

This may be taken as the formal beginning of the *nisi prius* system; it was made more effective in 1340 by the well known statute of that year,

34 Edward III, st. 1, c. 16. The meaning of this is that when the pleadings in an action in the Court of King's Bench or Common Pleas (also later in the Exchequer) were completed and it was not to be tried at Bar, the Record of Pleadings was sent to the county where the case should be tried; the Sheriff of the county was ordered to call a jury to try the case at Westminster on a particular day unless before (*nisi prius*) the day fixed the judge of Assize come into the county—this he was sure to do.

It has been pointed out that the "Judges of Assize" had three commissions of criminal validity, (1) commission of the peace; (2) of Oyer and Terminer; and (3) of General Gaol Delivery; they had also two of civil import; (4) of Assize; and (5) of *nisi prius*. The commission of Assize enabled them to take "Assizes," that is, the verdict of a jury in certain peculiar species of action relating to land called an "Assize," now long obsolete; the commission of *nisi prius* empowered them to try all questions of fact then ripe for trial by jury.

The civil courts under these circumstances by the time we are now considering were really *nisi prius* courts, but the old name Assizes was retained (as indeed it is till this day). This is the "Court of Assize" which was to be held by the Chief Justice once a year at Montreal and Three Rivers.

(c) The English Court of Common Pleas had jurisdiction exclusive in real actions and concurrent in personal actions "pleas between man and man," but none in criminal matters; its actions were generally tried at *nisi prius* and all with a jury. The Quebec Court of Common Pleas had no exclusive jurisdiction but it had concurrent jurisdiction with the King's Bench in civil actions above £10. Cases were tried without a jury unless either party desired a jury. It had no criminal jurisdiction.

(d) The Courts of Quarter Sessions had in England an extremely limited civil jurisdiction not extending beyond highways, bridges, the care of illegitimate children, the poor laws, apprentices and servants' wages—the jurisdiction given to the Quarter Sessions at Quebec and Montreal had no precedent in England.

(e) Justices of the Peace out of Sessions had little civil jurisdiction and this wholly statutory; nothing like that given by the ordinance to the Colonial Magistrates was to be found in England.

APPEALS: In England and in Canada there was no appeal in criminal cases; but the Court of King's Bench might in either country have the record of inferior courts brought up on certiorari to examine into the regularity, etc., of the proceedings.

(a) In civil cases in England there was an appeal from the Court of King's Bench to the Court of Exchequer chamber (composed of all the judges of the Court of Common Bench and the Barons of the Court of Exchequer) with a further appeal to the House of Lords. In the colonial court an appeal was given from the Court of King's Bench to the Governor and Council when the matter in contest was over £300 and a further appeal to the King in Council when over £500. This was quite in accord with colonial practice; while the House of Lords was (and is) the final court of appeal in cases (speaking generally) from the British Isles, the King

in Council, i.e., (in practice) the Judicial Committee of the Privy Council is the final court of appeal for all the rest of the British world.

(b) The record in the Court of Assize was sent up to the Court of King's Bench and the judgment entered in that court, there could, therefore, be an appeal from this court. Motions for new trials, etc., were made in the Court of King's Bench.

(c) In England at this time a writ of error in the nature of an appeal lay to the Court of King's Bench from the Court of Common Pleas; cases which the judges in the Court of Common Pleas considered of great weight and difficulty were sometimes adjourned into the Court of Exchequer chamber before any judgment was given on them in the court below. In such cases, the Court of Exchequer Chamber consisted of the Judges of the three Superior courts, King's Bench, Common Bench and Exchequer and sometimes the Lord Chancellor also.

In the Quebec ordinance an appeal is given from the Court of Common Pleas to the Court of King's Bench in cases involving over £20; to the Governor and Council over £300 sterling, with a further appeal to the King in Council of £500 or upwards.

(d) From the Quarter Sessions in the colonies an appeal lay to the King's Bench.

(e) From the Justices of the Peace out of sessions there was no appeal.

THE LAW ADMINISTERED: In the Court of King's Bench and apparently in the Quarter Sessions and before Justices of the Peace the law of England was prescribed.

In the Court of Common Pleas the direction was indefinite and puzzling—the judges were “to determine according to equity, having regard nevertheless to the laws of England as far as the circumstances and present situation of things will admit.” Equity had already acquired the meaning “principles upon which the Court of Chancery acts in deciding cases.” These principles, where they differed from the common law of England, were mainly derived from the Roman civil law, the ultimate basis of the French-Canadian law. This Court was intended chiefly for French-Canadians, and the judges were left at liberty to apply the French-Canadian law, and in fact the ordinance was generally interpreted as prescribing this law. The French-Canadian law was made to apply to causes of action between French-Canadians arising before October 1, 1764; this was to allow the eighteen months to elapse which had been provided for in the Treaty of Paris to enable them to choose their allegiance. After that time they could not complain if they did not enjoy the benefit of their former laws.

THE COURTS IN ACTUAL OPERATION: As was to be expected there was considerable friction in the administration of law by these various courts, some arising from intolerance and race hatred and some from the nature of things.

At the first Quarter Sessions at Quebec after this ordinance holden in October, 1764, the Grand Jury made a presentment complaining that Roman Catholics “impannelled on grand and petty juries even where two Protestants were partys” and “we therefore believe that the admitting of persons of the Roman Religion, who own the authority, supremacy and jurisdiction of the Church of Rome as jurors is an open violation of our most sacred laws

and libertys and tending to the utter subversion of the Protestant religion and His Majesty's power, authority, right and possession of the Province to which we belong.

The question was submitted to the law officers of the Crown, and they gave opinion that the Roman Catholics in Canada were not within the prohibitions against Roman Catholics in England. Governor Murray received instructions to have an amending ordinance passed: he left for England, but the acting Governor had a new ordinance passed July 1, 1766, placing the matter beyond doubt.

This ordinance specially provided "That all His Majesty's subjects in the . . . Province of Quebec, without distinction, are intituled to be impannelled and to sit and act as jurors in all causes, civil and criminal, cognizable by any of the courts or judicatures within the said province. . . . And that in all civil causes or actions between British born subjects and British born subjects, the juries in such cases or actions are to be composed of British born subjects only. And that in all causes or actions between Canadians and Canadians, the juries are to be composed of Canadians only; and that in all causes or actions between British born subjects and Canadians the juries are to be composed of an equal number of each, if it be required by either of the parties in any of the above-named instances."

The Justices of the Peace Courts, especially those of single Justices, speedily got into disrepute; it was charged, and apparently with truth, that some of the Justices of the Peace stirred up strife and litigation so as to bring grist to their mill. The Quarter Sessions did not escape criticism; it was pointed out that there was no Justices of the Peace in Canada with such knowledge of the law that they could properly charge the jury.

At length an ordinance, passed February 1, 1770, took away the jurisdiction to try civil actions altogether from the Sessions and Justices of the Peace and directed that all cases involving not more than £12 Quebec currency (\$48.00) should be tried by the Judges of the Court of Common Pleas only and by them finally determined "as to them shall seem just in law and equity." The judges were directed to appoint one day in each week (except in vacation) for the trial of such cases over £12, and not to adjourn for more than a week on any pretence; and every Friday for cases not over £12, these one judge might dispose of.

Two terms in the year soon became too few for speedy justice. July 26, 1766, a new term, Michaelmas Term, was created, beginning October 15 for the Courts of King's Bench and Common Pleas. This was not wholly effective and the ordinance already mentioned (February 1, 1770) absolutely divided the Court of Common Pleas, making two Courts of Common Pleas, one at Quebec and one at Montreal, wholly separate from each other, and ordering the judges of both courts to keep their courts open all the year round "except on Sundays and three weeks at seed time, a month at harvest and a fortnight at Christmas and Easter, and except during such vacation" as was necessary for the judges to make their circuits twice a year. Another difficulty necessarily arose from the different law administered in the King's Bench and in the Common Pleas. When the cases came to be considered in the King's Bench in appeal from the Common Pleas, the Chief Justice found himself in great difficulty; his commission directed him to

decide according to the laws of England while the ordinance directed the judges of the Court of Common Pleas to decide according to equity (which was commonly understood to mean the French-Canadian laws). The Chief Justice cut the knot by considering himself a judge of second instance bound by the same laws as were the judges of the first instance in the Court of Common Pleas; but the anomaly of different rules of decision according to the court selected continued. The Court of King's Bench was most affected by the "old subjects," the practice was the same as in the King's Bench in England and highly technical. No one but English lawyers practiced in it and the proceedings were as a rule in English. In the Court of Common Pleas the proceedings were far from formal; they were drawn up in any form and style the parties or their advocates thought proper, in French or in English, according as the attorney was Canadian or English, most frequently in French, as the court was sought chiefly by the Canadians and they had Canadian lawyers. The Canadian lawyer was notary, attorney, barrister, proctor and even land surveyor all in one, and did not like to be excluded from the highest court. The ordinance of September 17, 1764, gave him the right to practice in the Common Pleas only; this was rectified by the ordinance of July 1, 1766, which directed that "His Majesty's Canadian Subjects" should be permitted to practice in all the courts in the Province as "Barristers, Advocates, Attorneys, and Proctors."

The wholly unsatisfactory state of the practice in this court was put an end to by the ordinance of February 1, 1770, which prescribed forms, etc., allowed either the French or English to be used, and generally laid down a simple and satisfactory code of practice, so that he may run that readeth it, and the wayfaring men unless they are fools shall not err therein.

THE COURTS: As we have seen, the Quebec Act of 1774 put an end to all existing ordinances, courts, etc., in the Province as of May 1, 1774. Apparently it had been intended to send out to the Colony for its enactment there an ordinance for the establishment of Courts, etc.; this seems not to have been done. The rapidly growing troubles in the Thirteen Colonies interfered with the immediate carrying into effect the Royal Instructions to Carleton, January 3, 1775, to establish Courts. He declared martial law in the province June 9, and it was not till 1777 that affairs became sufficiently settled in the province to care for ordinary civil administration. Montgomery having been killed, and Arnold and Wilkinson having retreated from Canada on February 25, 1777, an ordinance was passed establishing Courts of Civil Jurisdiction and March 4, 1777, one establishing Courts of Criminal Jurisdiction.

The Criminal Courts were: (1) the Court of King's Bench, holding two sessions each year in Quebec and two in Montreal (with power to the Governor to issue commissions of Oyer and Terminer and General Gaol Delivery at any time; (2) Courts of Quarter Sessions in each of the two districts, meeting four times a year; (3) Courts of the Coroner of each District to be held by him or in his absence by the Captains of Militia in their respective parishes. The civil courts were (1) the two Courts of Common Pleas in the two districts. Causes of action were divided into two classes, those not more than £10 sterling and those more than £10 sterling. For the former class one day in every week was to be set, and for the latter another day (excepting three

weeks at seed time, a month at harvest and a fortnight at Christmas and Easter, and vacation appointed by the judges for taking their circuits); for the former one Judge was enough and there was no appeal (except in certain cases). For the latter two judges were required, and there was an appeal to the Governor and Council, the Chief Justice presiding in the absence of the Governor and Lieutenant-Governor; this "Superior Court of Civil Jurisdiction" was to sit the first Monday of every month during the year, with power "to revise all errors both in fact and in law and to give such judgment as the Court below ought to have given." The judgment of the court was final (except in certain special cases) if the amount in dispute should not exceed £500 sterling in the special cases, and in all cases above £500 an appeal lay to the King and Council, i.e., the Privy Council.

It will be seen that the Court of King's Bench was deprived of its civil jurisdiction, no doubt because the English civil law was no longer to be administered, and became a purely criminal court. The courts of Assize and nisi prius of course disappeared; the courts of Common Pleas sat and tried the cases themselves.

In 1785 special provision was made for the convenience of new settlers. The ordinance 25 George III., c. 5, passed April 30, 1785, provided "for the ease and convenience of His Majesty's subjects . . . in the upper parts of this Province" by authorising any Justice of the Peace to issue a writ of summons calling before him any person in the said districts and hear and determine any cause for the recovery of a debt more than 2s. 6d. (50 cents) and not more than 40s. (\$8.00). Any two Justices of the Peace could hear and determine up to and over 40s. up to £5 (\$20.00) with costs up to 3s. (60 cents) or 5s. (\$1.00) respectively, giving the debtor such time to pay (not more than five months) as the court should think reasonable, and also to allow the debt to be paid in instalments if thought advisable.

It will be seen that the part of the upper country here described afterwards became the districts of Luneburg and Mecklenburg.

These were the courts in existence when Lord Dorchester created the four new districts of Luneburg, Mecklenburg, Nassau and Hesse in 1788.

The western country filled up, an ordinance was passed April 30, 1787, authorising the Governor to form new districts by patent under the Great Seal of the Province, and this as we have seen he did by patent July 24, 1788.

In each of the districts a court of Common Pleas was erected with the same jurisdiction and the same practice as the courts of Common Pleas in the districts of Quebec and Montreal. It will be necessary now to set out the practice in these courts of Common Pleas.

There had been an administration of justice Act passed February 1, 1770, but this came to an end May 1, 1775, by the provisions of the Quebec Act, 1774: the ordinance passed February 25, 1777, did not prove wholly satisfactory, and April 21, 1785, a new ordinance to regulate the proceedings in the courts of civil judiciary was passed.

This divided actions into two classes: (a) those above £10 sterling and (b) those not above not above £10 sterling.

In the former class the plaintiff drew up a declaration (i.e., a paper writing setting out the cause of action, etc.), he presented the declaration to one of the judges of the Court of Common Pleas; if a cause of action appeared the judge made an order for the issue of a writ of summons; on this order being produced to the clerk of the Court, he issued a writ of summons (French or English according to the language of the defendant) in the name of the King, tested (i.e., "witnessed") in the name of the judge to the sheriff to serve upon the defendant and commanding such defendant to . . . appear in such Court to answer to the plaintiff on a day appointed by the judge in the order . . . regard being had to the season of the year as well as to the distance of the defendant's abode or place of service from the place where the court may sit." Service of a copy of the writ of summons and declaration was made either upon the defendant personally or upon some grown person belonging to the family and at his house. Special provision was made for the case of a defendant not personally served who was absent beyond the Long Sault (on the Ottawa, or beyond Oswegatché (Ogdensburgh) in the upper part of the province, or below Cape Cat or the Seven Islands in the Lower St. Lawrence. In case of a debt exceeding £10 sterling, if it was sworn that the defendant was about to leave the province and the plaintiff be thereby deprived of his remedy, a *capias* might be ordered by the judge or judges to hold the defendant till he put in bail.

If the defendant did not appear in person or by attorney, a default was noted; if, on calling over the action on the next weekly court day, the defendant again fails to appear without good reason for his defence the plaintiff proved his case and got judgment and execution. If the defendant appeared on the return day or on the next weekly court day (on paying the costs of default if any) he was allowed on that day or some subsequent day to set up his defence, orally or in writing, if verbal the clerk took it down, if in writing it was filled in court. If the plaintiff did not appear to support his actions it was dismissed with costs. *Juries* were allowed at the option of either party in debts, etc., of a mercantile nature (between merchant and merchant, trader and trader) and of "personal wrongs committed" the agreement of nine out of twelve jurors to be sufficient; in cases between natural-born subjects of Great Britain, Ireland or the American Plantations and Provinces, the jurors to be the same; between Canadians, Canadians; and between natural-born subjects and Canadians, half of each. In all commercial matters the rules of evidence laid down by the laws of England to govern. If neither party desired a jury, the case was tried by the judges (at least two). All merchants or traders of full age and all householders or occupants of lodgings of the value of £15 per annum, being of full age, were qualified as jurors.

In case of appeal, a writ of appeal was made out, tested, and signed by the Governor, Lieutenant-Governor or Chief Justice; this was produced to the court below, and when the appellant had given the requisite security the proceedings were transmitted to the Court of Appeal, i.e., the Governor in Council: the appellant within eight days filed his reasons of appeal, or his appeal was in peril of dismissal: the respondent within eight days filed

his answer or he stood in peril of not being allowed to do so; then a day was fixed for the hearing and the appeal was argued and decided.

Where the claim was £10 sterling or under the plaintiff prepared or procured from the clerk a formal declaration setting out the amount of his claim; at the foot of the declaration the clerk wrote out a summons which was signed by one of the judges calling upon the defendant to appear before the court on a day named; a copy of the summons and of the declaration was served on the defendant as in the other class of cases. If he did not appear, the judge (one judge was sufficient) heard the plaintiff and gave judgment accordingly; if he did appear and the plaintiff did not appear to support his claim, the action was dismissed with costs; if both appeared, the cause was heard and judgment given accordingly with costs; execution issued eight days later. Whether the claim was above £10 or not, if any debtor conveyed away his goods or concealed them or kept them from being seized, execution might go against his person and he be kept in prison until he paid; in commercial matters, between merchants or traders, and for debt due to merchants or traders for goods sold, execution might go against the person of the debtor; but after being in prison one month, the debtor might obtain his release on filing an affidavit that he was not worth £10 unless the plaintiff allows him 3s. 6d. a week (or in times of scarcity the court may allow 5s.); whenever the plaintiff failed to pay this "subsistence money" the defendant was released from gaol.

It will be seen that the actions were begun by writ of summons or by simple summons, according as the cause of action was more or not more than £10, just as in our present practice we have the simple summons in the lowest or Division Court, but the writ of summons in the higher courts.

The original practice in the Court of Common Pleas laid down by the ordinance of September 17, 1764, was "The first process of this Court to be an attachment against the body, an execution to go against the body, lands or goods of the defendant." The "attachment against the body" was what is called in law a *capias ad respondendum* (often contracted into *ca. re.*); one having a cause of action against another took out a writ of *ca. re.*, handed it to the sheriff, who arrested the defendant until he put in bail to pay the amount claimed. This was in practice (if not quite in theory) the first process in the Court of Common Pleas in England at the time; in the Court of King's Bench a practice not unlike this was very commonly adopted, though that court had technicalities of its own.

The French-Canadians were dismayed at this practice; they protested and petitioned: "We have seen with grief our fellow-citizens imprisoned without being heard, and this at considerable expense, ruinous alike to the debtor and creditor." The Attorney-General of the Province, Francis Maseres, at the instance of the Governor, Sir Guy Carleton, drew up and presented a report, on September 2nd, 1769, in which he said, *inter alia*, "Arrests of the body for debt are used in the first instance both upon suits in the Court of King's Bench and suits in the Court of Common Pleas, and even upon suits instituted before Justices of the Peace. This is a part of the English law that a good deal surprised and alarmed the Canadians upon its first introduction, as it carried an appearance of much greater severity than was practiced under their own laws, which allowed of im-

prisonment only in criminal proceedings and in some few civil suits grounded on bills of exchange or other instruments of a commercial nature, and then only in the beginning of the suit; but now (1769) they are grown accustomed to this way of proceeding, and frequently put it in practice against each other." But he did not recommend the abolition of imprisonment on "final process," i.e., after judgment, as "many persons of good sense and character of both nations are of the opinion that, considering the great credit that has been given by persons in trade in this province and the knavish and trickish disposition that has appeared in many of those to whom it has been given, there is no other method of proceeding by which creditors can hope to obtain payment of their debts." As to arrest before judgment, he said: "Other persons are of a different opinion and think arrests of the body in the first instance an unnecessary piece of harshness in civil suits and wish it were restrained; and in this opinion we humbly submit it to your Majesty that we are ourselves inclined."

In the next ordinance concerning the Court of Common Pleas, i.e., that of February 1, 1770, it was provided that in cases not exceeding £12, no process was to issue after declaration filed, and while there is no express provision for a *capias ad respondendum* it was not abolished. This alleviated but did not destroy the grievance. We find the Home Solicitor-General, Wedderburn, in a Report, December 6, 1772, saying: "The Canadians, it is said, complain, and not without reason, of the arrest and imprisonment in civil cases . . . the arrest upon mesne process which is only used to compel appearance or answer may be abolished, and in lieu of it the plaintiff might be allowed after due summons to enter an appearance for the defendant." The Advocate-General, Marriott, in his Report, 1774: "As it appears that the Canadians have had so great an objection to arrests being dishonourable, and as arrests cause so much misery in a whole family who become a burthen upon the public, as they prevent every exertion of industry and render the morals of the prisoner much worse by confining him in company with the most abandoned criminals, it seems to me that in a commercial state it may be proper to take away arrests of the body in the first instance in civil causes under £10 unless there is an oath of two sufficient witnesses that the defendant is likely to withdraw himself out of the colony. To arrest an industrious man when personal labour is of so much value to the community is a public loss as well as a private one to the person who arrests; it is putting fetters upon that industry the exertion of which only could discharge the debt." He does not, however, advise the abolition of the arrest if the debt be £10 or over.

When after the Quebec Act a new ordinance for regulating the proceedings in the courts, that of February 25, 1777, was passed, the *ca. re* was abolished except in cases over £10 sterling, where "the judges or any two of them are satisfied by the affidavit of the plaintiff or otherwise that the defendant is indebted to him and on the point of leaving the province where the plaintiff might be deprived of his remedy against him," then "it shall be lawful for the said judges or any two of them to grant an attachment against the body of such defendant and hold him to bail, and for want of bail to commit him to prison until the determination of the action against

him." No provision was made for a *ca. re.* in any case not exceeding £10 sterling.

The subsequent ordinance of April 21, 1785, gave to "one or more judges" (instead of "the judges or any two of them") the power in cases over £10 sterling on "affidavit of the plaintiff or his book-keeper or clerk or legal attorney" (instead of the "affidavit of the plaintiff or otherwise") that the defendant is indebted to the plaintiff in a sum exceeding £10 sterling" if "satisfied by the oath of the plaintiff or some other person that the defendant is immediately about to leave the province and whereby the plaintiff might be deprived of his remedy against such defendant" to grant a *capias* to hold him bail or in prison till two days after the execution might be obtained by the plaintiff if he succeeded.

Accordingly, except where the debt was over £10 sterling, no person could be thus arrested at all; and unless a debtor was about to leave the province he could not be arrested at all before judgment. This was the law in the Courts of Common Pleas in the four districts now Ontario, and was the law in Upper Canada till 1794. In that year the first parliament of Upper Canada abolished the four courts of Common Pleas and established a Court of King's Bench of full civil and criminal jurisdiction. By Section 5 it was enacted "that the original and first process of the said court shall be by writ of *capias ad respondendum*," and the English practice was again in full force. But except where it was made to appear on affidavit that the defendant owed a sum certain to the plaintiff and was about to leave the province with intent to defraud his creditors, the defendant could not be held to "special bail," "common bail," a mere formality was put in. With modifications it held its own for more than three-quarters of a century, receiving a death blow only in 1858. In a statute of that year it was enacted: "After the first day of September, A.D. 1858, no person shall be arrested upon mesne or final process in any civil action in any of Her Majesty's Courts in Upper Canada" (except those about to abscond owing at least £25, i.e., \$100).

The *capias ad satisfaciendum* had a somewhat similar history. It was a writ of imprisonment granted after judgment had gone against the defendant, and it may well be considered with the other forms of execution intended to satisfy the plaintiff's judgment.

The Ordinance of September 17, 1764, provided that in the Court of Common Pleas "An execution to go against the body, lands, or goods of the defendant."

At the time in England where judgment was for money either as debt or as damages the plaintiff might have execution of five kinds: (a) against the body of the defendant, (b) against his goods and chattels, (c) against his goods and chattels and the profits of his lands, (d) against his goods and chattels and the possession of his lands, or (e) against all three—body, goods and lands. But it was not allowed to sell the lands of the defendant, but a statute was passed in 1732 making lands in the Plantations or Colonies subject to simple contract debts and providing that in satisfaction of all debts execution which would go against goods and chattels should operate also against lands and tenements, so that the debtor's land could be sold, not simply occupied.

There never was any objection on the part of the French-Canadians to execution against goods or against lands, but they did object to execution against the body the *capias ad satisfaciendum*.

The objections to the *ca. re.* applied, though with less force, to the *ca. sa.* Maseres spoke in his report of the inconvenience of "the severity of the present method of proceeding in civil actions by arresting and imprisoning the defendant's body. This, by filling the gaols with unhappy debtors, increases the number of poor and helpless, and makes the families of the debtors, as well as the debtors themselves, become oftentimes a burden to the publick, and it is generally thought by the Canadians to be an unnecessary degree of harshness," and advises that "when judgment was given for the plaintiff in a civil action a writ of execution should go against the goods and lands of the defendant, but not against his person, directing the . . . officer . . . to levy . . . upon the defendant's movable goods and chattels, and in case they are not sufficient . . . to sell part of his land . . . if the . . . officer could not find a sufficient quantity of either movable or immovable property . . . and the judge was of the opinion . . . that there was reasonable grounds to suspect that the defendant had secreted or concealed some of his effects, he might require him to deliver in to the court upon oath an exact schedule of all his estates and effects of every kind, and if he refused to do so might commit him to prison until he complied."

A Committee of the Council having been appointed in 1769 to take into consideration the State of Administration of Justice, reported September 11, 1769, advising that in all executions where the debt and costs do not amount to £10 Halifax currency (\$40.00) no *capias ad satisfaciendum* to arrest or detain the body of the defendant should be granted.

The Ordinance of February 1, 1770, provided for a *ca. sa.* in all cases over £12 Quebec currency, but where the judgment was not over £12 the execution was first on goods and chattels; if these were insufficient an enquiry was made as to the defendant's lands, their extent, and whether sowed or reserved for hay, whereupon the judge might issue another writ to take possession of the land "immediately after the reaping or mowing of the same" and take the crop. If the defendant conveyed away or secreted any of his goods, a *ca. sa.* might be granted. There was to be no execution against houses or lands unless the debt exceeded £12 Quebec currency.

Then came the ordinance of April 21, 1785, which provided that in causes exceeding £10 sterling an execution should issue "to take the body or to levy a sum of money out of any one's goods and chattels, lands, and tenements"; where the claim did not exceed £10 sterling execution against the body, as well as where above £10 if the defendant should convey away or secrete his effects or should with violence or by shutting up his house, store or shop, oppose his effects being seized.

Moreover, as we have seen, "for the satisfaction of all judgments given in commercial matters between merchants or traders, as well as of all debts due to merchants or traders for goods, wares, and merchandizes by them sold, execution shall issue not only against the goods, chattels, lands and tenements of the defendant, but also in case they do not produce the amount of the plaintiff's demand against his person, to be taken and conveyed into the prison of the district."

The practice of *ca. sa.* thus introduced into the territory afterwards Upper Canada continued; the Act of 1794 erecting the Court of King's Bench in Upper Canada introduced the English practice of *ca. sa.*; this after being amended from time to time disappeared in 1858 and 1859.

The ordinance of April 30, 1789, enacted that in all trials in Courts of Oyer and Terminer and General Gaol Delivery, where the Chief Justice did not preside, sentence should not be executed until the pleasure of the Governor should be known; and that copies of the proceedings should be sent to the Governor with all convenient speed; these provisions not to apply where the sentence did not extend to life or limb or any greater penalty than £25 sterling.

The like provisions were made for the Quarter Sessions, where there was a fine of £25 sterling and upwards.

Until safe gaols should be built in the new districts, the Courts of Oyer and Terminer might send any prisoner convicted before them of a capital offence to any prison they should designate for safety.

To avoid the cost of unnecessary detention of prisoners, larceny of not more than 20 shillings sterling should be considered simple larceny (instead of one shilling as in England); and whenever any one was in gaol charged only with a breach of the peace or simple larceny, and did not give bail within forty-eight hours any three Justices of the Peace could try him and give him (on conviction) such "corporal punishment (not extending to life or limb)" they should see fit, and after the execution thereof he should be discharged. If he had not a stated residence within the province for at least 12 months they might require him to enter into recognizances for good behaviour for seven years.

In the district of Hesse "until the Bench . . . should have three judges . . . all the powers and authorities of the whole number shall be vested in . . . the first judge thereof." Yearly circuit courts with civil jurisdiction were expected to be necessary in the northern part of Hesse, i.e., at Michilimacinac, and power was reserved to the Governor and Council to form them; and the Court of Hesse was not to be ousted of jurisdiction by reason of the cause of action not having arisen in that district or by reason of the defendant not being domiciled therein; nor was anyone to shelter himself behind the "Laws of prescription or limitation which pre-suppose a state of general tranquillity and the easy and frequent course of justice." No such plea should be allowed except in cases in which the cause of action accrued after Jan. 1, 1790. In the four districts and in Gaspé where the title to the freehold came in question, evidence according to the laws of England or to the French-Canadian laws should be allowed. Movables when seized by the Sheriff should be advertised at the church door of the parish on the first Sunday thereafter, or, if there was no church, at the door of the Court House and the nearest grist mill; and they were not to be sold until till fourteen days after such notice. Lands were to be advertized three times in writing in the Court House door, in the office of the Clerk of the Court, and at the nearest grist mill and sold not less than four months after the first publication.

REFERENCES.

(1) Fourth Report of Bureau of Archives, Ontario, 1906, pp. 2, Sqq. Kingsford's History of Canada, Vol. V, p. 142.

(2) (1774) 14 Geo. III, c. 83 (Imp.). The historic quarrel between Edmund Burke and Charles James Fox took place during the Debate in the House of Commons on this Bill. 29 Hansard, pp. 103-113, 359-430.

(3) 32 George III, s. i (U.C.).

(4) "Seventh Report of the Bureau of Archives for the Province of Ontario," Toronto, 1910, p. 101. "Sixth Report of the Bureau of Archives for the Province of Ontario," Toronto, 1909, p. 17.

(5) The two Provinces of Upper Canada and Lower Canada were united into one Province of Canada by the Union Act (1840), 3, 4 Vic., c. 35 (Imp.). The thirteenth and last Parliament of Upper Canada was prorogued Feb. 10th, 1840. The first of the Province of Canada began June 14th, 1841.

The old Province of Canada was united with New Brunswick and Nova Scotia by "The British North American Act, 1867," 30, 31 Vic., c. 3 (Imp.), as of July 1st, 1867. The eighth or last Parliament of the Province of Canada was prorogued August 15th, 1866; the first Parliament of the Dominion of Canada began November 6th, 1867. The Parliaments of Upper Canada and of the Province of Canada had full jurisdiction, civil and criminal. Under the present system, while speaking generally, the Province has civil and the Dominion has criminal jurisdiction, still there are many most important branches of civil law in the Dominion's jurisdiction (e.g.), bills, notes, cheques, banking, etc., while the Province has power to create what are in reality crimes whatever the offences may be called (e.g., offences against the liquor laws).

(6) Many interesting details of the British occupation of what is now Michigan and Wisconsin will be found in the publications of the Michigan Historical Society. Of what is now Illinois and Indiana, in those of the Illinois State Historical Library (all in the Riddell Canadian Library). I do not here particularize more than is necessary to explain the jurisdiction of the Courts of Upper Canada.

(7) See Note 6.

(8) Most of the old school and a few of the modern school of American historians make much of the alleged perfidy of Britain in refusing to deliver up the posts on the right side of the international waters, but the matter was a perfectly simple one. The Treaty, by article 4, expressly provided that "creditors on either side shall meet no lawful impediment to the recovery of the full value in sterling money of all *bona fide* debts heretofore contracted." Some of the States had passed legislation which prevented British creditors from recovering their debts from American debtors, and these States refused to repeal these obnoxious laws which the State Courts held to be valid. Britain kept possession of the Forts at Dutchman's Point, Point au Fer, Oswegatchie, Oswego, Niagara, Buffalo, Detroit, Michilimacinae, and in answer to repeated representations said most firmly that she intended to remain in possession until redress should be given to her subjects. Finally by "Jay's Treaty," 1794, the United States agreed to pay these claims, and Britain gave up all the Posts, 1796.

(9) At that time there was no appeal in serious criminal cases at all. There was in cases of felony no power anywhere even to grant a new trial. In one case, *The Queen v. Scaife* (1851), 17 Adolphus and Ellis, Queen's Bench Reports, New Series, 238, the Court of Queen's Bench did make an order for a new trial at the instance of a prisoner who had been convicted of robbery at the York Assizes before Mr. Justice Cresswell. No precedent for such an order was cited or can be found, and the decision is disapproved by the Judicial Committee of the Privy Council in Attorney-General of New South Wales and Bertrand (1867) Law Report, 1 Privy Council, 520, also reported in Volume 16 of the Law Times New Series, p. 752. In *The King v. Inhabitants of Oxford* (1811), 13 East's Report of Cases in the King's Bench, pp. 410, 415 (note), it is said that there is no instance of a new trial being granted in a capital case. All the authorities up to that time (1811) are carefully collected in that case.

Sometimes a new trial would be granted in cases of misdemeanor, but such cases were very few. See "New Trial at the Common Law," 26 Yale Law Journal, pp. 58 Sqq. (November, 1916).

No right of appeal to the Privy Council was contemplated in criminal cases by this Proclamation.

UPPER CANADA

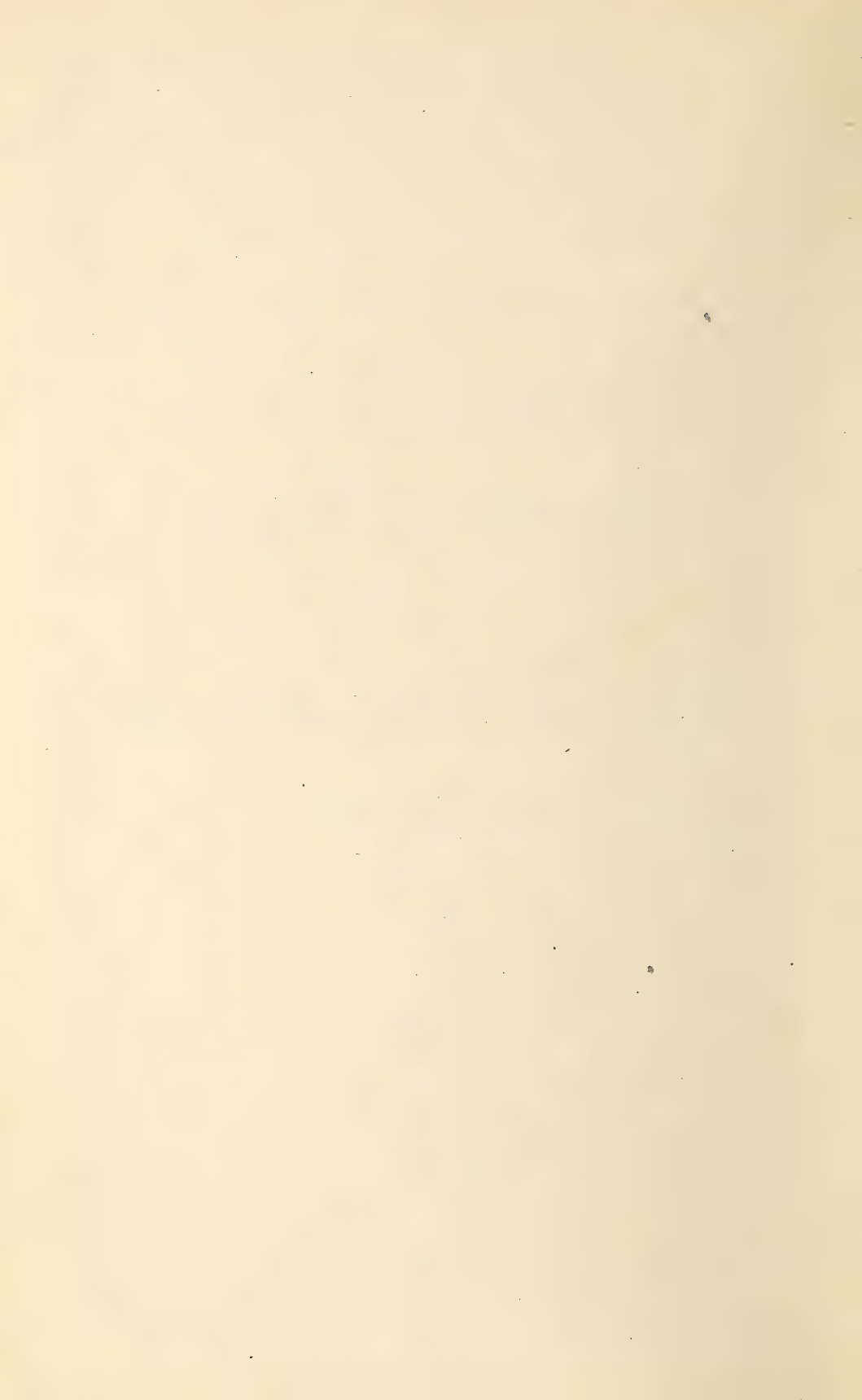
DISTRICT OF HESSE

RECORD OF THE

Court of Common Pleas

L'ASSOMPTION

1789



UPPER CANADA

DISTRICT OF HESSE

Record of the Court of Common Pleas

L'ASSOMPTION, 1789

Court of Common Pleas held at L'assomption in the said District on Thursday, the sixteenth day of July, one thousand seven hundred and eighty-nine.

Province of
Quebec,
District of Hesse,
16 July, 1789.

Present: The Honourable William Dummer Powell, Esquire, First Judge of the said Court, etc.

The plaintiff by his Attorney Walter Roe, filed his declaration, and the defendant being called thrice and not appearing: It is ordered that a default be entered against him.

John Robert
McDougall,
of Detroit,
Gentleman,
vs.
Isaac Germain,
Serjeant in the
Sixty-fifth
Regiment.

The plaintiff by his Attorney Walter Roe filed his declaration. The defendant being called, and appeared in person; and by consent of the parties: It is ordered that the defendant do plead to this cause on the first Court day in October next.

Hugh Heward
vs.
Antoine Lasselle.

The plaintiff by his attorney Walter Roe filed his declaration. The defendant appeared and confessed the debt, that it was justly due to the plaintiff for his wages when employed both himself and his horse in the service of the Miamis Company at Sandusky, during the time the defendant was acting as agent for the said company, and that the defendant was the person that engaged the plaintiff with his horse, finding that the service of the company could not be carried on without him. The Court ordered judgment be recorded against the said Hugh Heward after the matter being duly considered that he the said Hugh Heward pay to the said James Heward for his wages the sum of fourteen pounds, one shilling and threepence and the sum of costs as by him sustained with interest on the principal sum from the eleventh day of July last until perfect payment; reserving to the defendant his recourse for repayment from his employers.

James Heward,
of Detroit,
Labourer
vs.
Hugh Heward, of
the same place,
Gentleman, and
agent to John
Askin, Esq., and
Others Trading
under the Firm of
the Miamis Com-
pany.

Richard Dobie,
of Montreal,
Merchant,
vs.
John Martin,
of Detroit,
Merchant.

The plaintiff by Mr. Roe his attorney, filed his declaration and the defendant being called thrice and not appearing, it is therefore ordered that a default be entered against him.

Court adjourned to the 23rd of July, 1789.

T. SMITH,
Clerk.

Province of
Quebec,
District of Hesse,
23 July, 1789.
T.S.

COURT OF COMMON PLEAS. Thursday, the twenty-third day of July, one thousand seven hundred and eighty-nine.

Present: The Honourable William Dummer Powell, Esquire, first judge of said Court, etc.

Leith & Shepherd
vs.
J. Bts. Laduc, fils.

Walter Roe, attorney for the plaintiff, filed his declaration, and the defendant after being called appeared in person and acknowledged his signature to a note of hand now filed in Court, but pleads minority at the time of subscribing the same and that it was not a debt of his contracting, whereupon the Court ordered the defendant to prove his allegations on the twentieth of next August.

Thomas Cox of
Detroit (No. 2),
vs.
Guillaume
Gyeaux, of the
Parish of
L'assomption,
Yeoman.

Walter Roe, attorney for the plaintiff, filed his declaration. The defendant appeared in person and confessed judgment for the principal sum, but denied having ever agreed to pay interest to the plaintiff. Whereupon the Court ordered judgment to be recorded against the defendant to pay unto the plaintiff the principal sum of one hundred and sixteen pounds, eleven shillings and eightpence, currency of the province and interest to be thereon computed from the twentieth day of July last until perfect payment with the sum of for costs accrued in the premises.

Execution issued 24th August, 1789, and returnable 7th January, 1790.

Principal sum £116 11 8
Costs

Thomas Smith
vs.
Jean Bte. Crete.

The plaintiff appeared and filed his declaration and the defendant being called and entered appearance.

McKillip & Jacob
vs.
Claude Salaut,
of Detroit,
Yeoman.

Mr. Roe for the plaintiff filed his declaration and the defendant appeared in person and declares that he owes nothing to the plaintiff and that the goods as specified in the account annexed to the plaintiff's declaration he received in the quality of a clerk. The Court order the

plaintiff to prove their allegations on the twentieth of next August.

Walter Roe for the plaintiff filed his declaration and the defendant appeared in person and acknowledged the principal sum; but objected against the interest, saying that he never agreed to pay it. The Court order the plaintiffs to prove their demand on the twentieth of next August.

Meldrum & Park
vs.
Pierre Labute, of
the Parish of
L'assomption,
Yeoman.

Walter Roe for the plaintiffs filed his declaration. The defendant appeared in person and acknowledged the plaintiffs account to be just; but that he had an account of work done for the plaintiffs to the amount of one hundred and eighty livres ancient currency of Quebec which he moved to be deducted. The Court order judgment to be recorded against the defendant for the balance (after deducting the said one hundred and eighty livres) of thirty-nine pounds, sixteen shillings and twopence currency with interest to be thereon computed from the twentieth of July last until actual payment with the sum of six pounds, ten shillings and sixpence like currency for costs of Suit.

Meldrum & Park.
vs.
Dominique
La Brosse, of the
Parish of St.
Anne, Yeoman.

No. 3.

Execution issued 12th August, 1789. Returnable 7th of January, 1790.

| | |
|---------------------|----------|
| Principal sum | £39 16 2 |
| Costs | 6 10 6 |
| | <hr/> |
| | £46 6 8 |

Walter Roe for the plaintiff filed his declaration, and the defendant appeared in person and denies he had any account to render to the plaintiffs respecting a certain quantity of Indian corn as set forth in the plaintiff's declaration. The Court orders the plaintiffs to prove their demand on the twentieth of next August.

Meldrum & Park
vs.
Joseph Barron,
of the Parish of
St. Anne, Yeoman.

Mr. Charles Smyth acting by procuration for the plaintiff filed his declaration. Walter Roe, the defendant's attorney entered appearance.

William Groesbeck, of Detroit,
Merchant,
vs.
Joseph Gamelin,
of the Parish of
L'assomption.

Mr. Charles Smyth acting by procuration for the plaintiff filed his declaration. The defendant appeared in person and acknowledged the note as set forth in the declaration, but pleads to have deducted a payment made thereon of two pounds, three shillings and fourpence currency. Thereupon the Court ordered judgment to be

William Robertson, of Detroit,
Merchant,
vs.
Antoine
Dequindre,
of the Parish of
St. Anne.

recorded against the defendant for the balance of fourteen pounds six shillings and tenpence half penny currency with interest to be thereon computed from the twenty-second day of July last, until ample payment and the sum of six pounds one shilling and elevenpence like currency of costs accrued in the premises.

Execution issued 12th August, 1789. Returnable 7th January, 1790.

| | | | |
|---------------------|-------|---|-----|
| Principal sum | £14 | 6 | 10½ |
| Costs | 6 | 1 | 11 |
| | <hr/> | | |
| | £20 | 8 | 9½ |

Richard Dobie,
of Montreal,
Merchant,
vs.
John Martin,
of Detroit,
Merchant.

Mr. Roe, the attorney for plaintiff, informed the Court that this action was continued last Court day and that the defendant had been then thrice called and not appearing and a default was recorded against him. The defendant now being called again and entered appearance, and declares he is not indebted in the sum as set forth in the plaintiff's declaration. The Court order the plaintiff to prove his demand on the twentieth of August next.

John Robert
McDougall,
of Detroit,
Gentleman,
vs.
Isaac Germain,
Serjeant in the
65th Regiment.

Mr. Roe, attorney for the plaintiff, mentioned to the Court that this action was entered last Court day, the sixteenth of July, and was continued (by reason of a default being recorded against the defendant) to this day. Whereupon the defendant was this day again thrice called and did not appear. The Court order a second default to be recorded against him and that the plaintiff shall prove his demand on the twentieth of next August.

Causes under ten
pounds sterling.

Leith & Shepherd,
vs.
Antoine Charron.

Walter Roe, attorney for the plaintiffs, and the defendant appeared in person and confessed the debt. The Court ordered judgment to be recorded against the defendant for the sum of five pounds, twelve shillings and six pence currency and eleven shillings and eightpence costs with a stay of execution for one month.

Execution issued 24th September, 1789. Returnable in one month.

| | | | |
|-------------|-------|----|---|
| Debt | £5 | 12 | 6 |
| Costs | 0 | 11 | 8 |
| | <hr/> | | |
| | £6 | 4 | 2 |

Court adjourned to the 20th of August next.

T. SMITH,
Clerk.

COURT OF COMMON PLEAS, Thursday, 20th of Aug., 1789.

Present: The Honourable William Dummer Powell,
Esquire, First Judge of said Court, etc.

Charles Smyth for the plaintiff, acting by procuration, filed his declaration. The defendant being thrice called and not appearing, the Court ordered a default to be recorded against him.

Walter Roe for the plaintiff filed his declaration. The defendant being called and not appearing, the Court ordered a default to be entered against him.

Walter Roe, attorney for the plaintiff, filed his declaration and informed the Court that an attachment had been issued out against certain movables in the hands of the defendant at Saguinau. The defendant being called and not appearing, the Court ordered a default to be recorded against him and the seizure to hold good.

Walter Roe for the plaintiff filed his declaration, and the defendant entered appearance.

Walter Roe for the plaintiffs filed his declaration, and the defendant appeared in person and acknowledged the debt. The Court ordered judgment to be recorded against the defendant, for the sum of twenty-eight pounds, eighteen shillings and ninepence currency, with interest to be thereon computed from the twenty-ninth day of July last until ample payment and the sum of six pounds eighteen shillings and eightpence for costs as accrued in the premises.

Execution issued 24th September, 1789. Returnable 7th January, 1790.

| | |
|-------------|----------|
| Debt | £28 18 9 |
| Costs | 6 18 8 |
| | <hr/> |
| | £35 17 5 |

Capias and Satisfaciendum issued 19th November, 1789. Returnable in one month.

| | |
|-------------------|----------|
| Debt | £35 17 5 |
| Writ | 0 5 0 |
| Extra costs | 1 6 6 |
| | <hr/> |
| | £37 8 11 |

Province of
Quebec.
District of Hesse.
20 August, 1789.
T.S.

John Askin,
vs.
Francis Fontenoy,
of Saguinau,
Trader.

Jonathan
Schieffelin
vs.
Francis Fontenoy,
of Saguinau,
Trader.

Jonathan
Schieffelin
vs.
John Visgar.

James May,
vs.
Peter Leucks,
of St. Anne,
Labourer.

Leith & Shepherd,
vs.
John Pike, of the
River a la
Tranche, Yeoman.

John Gregory
vs.
William Thorn.

Walter Roe, attorney for plaintiff, filed his declaration, and the defendant being thrice called and not appearing, ordered a default to be entered against him.

Leith & Shepherd
vs.
William Thorn.

Walter Roe, attorney for plaintiff, filed declaration and the defendant being called and not appearing, ordered a default to be entered against him.

Thomas Cox
vs.
Guillaume Gyeaux,
of L'Assomption,
a Writ of an
Attachment in the
hands of Jos.
Pilet for £116.11.8
currency, the sum
for which judgment
was rendered the
23 July last.

Walter Roe, for the plaintiff, filed his declaration, and the defendant appeared in person.

As judgment was rendered the twenty-third of July last against the defendant, and execution the twenty-fourth of August, and finding by the Return of the Sheriff that the defendant's goods and chattels, lands and tenements are not sufficient to satisfy the said judgment creditor, and the plaintiff's attorney suspecting that the defendant has property secreted in the hands of Joseph Pilet, he was therefore summoned before this Court to give his declaration on oath, whom being called and duly sworn, and declared "to have no effects of the defendants in his hands at this time; nor have had at the time of the service of the declaration.

Meldrum & Park,
of Detroit,
Merchants and Co-
partners in Trade,
vs.
John Pike, of the
River a la Tranch,
Yeoman.

Walter Roe, attorney for the plaintiff, filed his declaration: and the defendant being called and confessed judgment. Whereupon the Court ordered judgment to be recorded against the defendant for the sum of sixty-seven pounds and twopence currency, with costs of suit and interest to commence from the third day of August last, until perfect payment, the taxed sum for costs being

William Park, by
procuration of
James Sterling,
vs.
James Casety.

Walter Roe, for the plaintiff, moved to withdraw the action. Ordered accordingly.

James Fraser,
Attorney to the
Assignees of
Thos. Cox,
vs.
Pierre La Bute.

Walter Roe, for the plaintiff, filed his declaration, and the defendant being called and appeared in person and after some altercation, Mr. Roe, the plaintiff's attorney, moved to discontinue the suit. The Court ordered the suit to be discontinued accordingly.

James May,
of Detroit,
Gentleman,
vs.
Amable Latour,
of St. Anne, Car-
penter.

Walter Roe, attorney for the plaintiff, filed his declaration, and the defendant appeared in person after being called, and confessed the debt, whereupon the Court ordered judgment to be recorded against the defendant for the sum of twenty-two pounds, eight shillings currency with interest to be thereon computed from the twelfth day of August instant until perfect payment, and the sum of cost by him the plaintiff sustained.

Execution issued 8th September, 1789. Returnable
7th January, 1790.

Debt £22 8 0
Cost

Mr. Roe, attorney for the plaintiff, filed his declaration and the defendant being called, appeared in person, and denies the debt, and purchase of a lot in the second concession from the plaintiff; but acknowledged to have agreed with him to have the preference of said lot, if the land really was his property and he had a right to dispose of it. And that when he signed the obligation as set forth in the plaintiff's declaration he understood it to be no other instrument than a list of those people whom the plaintiff wished to give the preference to of the lots in the second concession in the parish of L'assomption; where the plaintiff claimed a very large tract by an Indian gift.

Isaac Williams,
of Sandusky,
Trader,
vs.
Jacques Charron,
of L'assomption,
Yeoman.

Walter Roe, attorney for the plaintiff, filed his declaration, and the defendant being called and appeared in person and confessed the debt, whereupon the Court ordered judgment for the sum of one hundred and fifty-six pounds, eight shillings and one penny halfpenny currency with interest from the twelfth day of August instant until perfect payment and the sum of costs by them, the said Meldrum & Park sustained.

Meldrum & Park,
of Detroit,
Merchants and Co-
partners in Trade,
vs.
Joseph Gamelin,
of the Parish of
L'assomption.

Execution issued 8th September, 1789. Returnable
7th January, 1790.

Debt £156 8 1½
Cost

Walter Roe, attorney for the plaintiff, filed his declaration, and Charles Smyth, attorney by procuration for the defendant, entered appearance.

Hugh Heward
vs.
John Askin.

Walter Roe, attorney for the plaintiff, filed his declaration, and the defendant being called and appeared in person and acknowledged that the plaintiff was in peaceable and quiet possession of the land in question and that he did enter on the premises in manner and form as set forth in the plaintiff's declaration, which being duly considered the Court ordered the defendant to put the plaintiff immediately in possession of the said premises, and the action to be continued in the meantime.

Isaac Dolson,
of L'assomption,
Yeoman,
vs.
Joseph Pernier,
dite Vadehoncoeur
of the River au
l'corse.

Meldrum & Park,
of Detroit,
Merchants and
Co-partners in
Trade,
vs.
Jean Baptiste
Crete, of the same
place, Timber
Merchant.

Walter Roe, attorney for plaintiffs, filed his declaration, and the defendant being called and entered appearance.

John Urquhart,
of Detroit,
Gentleman,
vs.
Jno. Askin, of the
same place,
Merchant.

Charles Smyth, acting by procuracy for the plaintiff, filed his declaration, and Walter Roe, attorney for the defendant, entered appearance.

OLD CAUSES.

Richard Dobie,
of Montreal,
Merchant,
vs.
John Martin,
of Detroit,
Merchant.

This action was continued the twenty-third of July last for the plaintiff to prove his demand this day; in consequence, Walter Roe, attorney for the plaintiff, filed his replication the eighteenth instant in the office. The defendant being now thrice called and not appearing, thereupon the plaintiff's attorney moved for judgment. The Court ordered the action to continue for eight days en deliberè and a second default entered against defendant.

Leith & Shepherd,
of Detroit,
Merchants and
Co-partners in
Trade,
vs.
Jean Bte. Leduc,
fls, of the Parish
of L'assomption,
Yeoman.

This action was continued the twenty-third of July last for the defendant to prove his allegations on this day. The defendant being called and appeared, and in support of his plea that he was a minor at the time of subscribing his name to the note in question, produced his *Batistere* which upon investigation it was thereby proved he was not a minor at the time of the execution of said note as set forth in the plaintiff's declaration, and although it was a debt contracted by his father he had by consenting to sign the said note become under an obligation of discharging the said debt. Thereupon the Court after having maturely considered the matter ordered judgment to be recorded against the defendant for the sum of fifteen pounds, nineteen shillings and fourpence halfpenny with interest to be thereon computed from the twentieth of July last until paid, and the sum of six pounds, six shillings and twopence costs by them the plaintiffs sustained in the premises.

Execution issued 19th September, 1789. Returnable 7th January, 1790.

| | | | |
|-------------|-------|----|----|
| Debt | £15 | 19 | 4½ |
| Costs | 6 | 6 | 2 |
| | <hr/> | | |
| | £22 | 5 | 6½ |

This action was continued the twenty-third of July last for the plaintiffs to prove their demand on this day. Walter Roe, the plaintiff's attorney being present and the defendant being called and appeared in person, Mr. Roe called on the part of the plaintiffs. "William Christie" their late clerk being of full age and not interested in this cause and duly sworn. That to the best of his knowledge he delivered to Meldrum & Park's servants, to be carried to the defendant's house, three hundred and eight bushels of Indian corn agreeable to the exhibit A now filed in Court from the month of April to the first of June. That he did not see it delivered but was the person that counted the bags.

Signed upon the Minutes. Wm. C. Christie.

By consent of parties the action is continued for fifteen days.

This action the twenty-third of July last was continued, and ordered that the plaintiffs do prove their demand this day, the defendant being therefore called and appeared in person and confessed the principal sum as before; but denied to have ever agreed to pay interest.

Be it remembered that on the twenty-third day of July last came before His Majesty's Court of Common Pleas for the District of Hesse, Meldrum & Park of Detroit, merchants and co-partners in trade, by Walter Roe, their attorney, and then and there declared that the defendant was justly indebted (in the sum of forty-nine pounds, six shillings and fivepence currency by a note of hand, with interest to be computed from the date thereof) to the plaintiffs, which sum though often demanded still remained unpaid, and the said Pierre LaBute having been summoned to appear to answer the plaint of the said Meldrum & Park in the said declaration set forth, and thereafter being called personally appeared and denied to have ever agreed with the plaintiffs to pay interest but acknowledged the principal sum, and a delay was allowed to the said Meldrum & Park until the twentieth of August following to make proof of the allegations in their said declaration contained, whereupon the said Meldrum & Park by their said attorney on the twentieth of August in the same year before the said Court; could not bring proof that the said Pierre LaBute agreed to pay them interest as set forth in their declaration, and the said Pierre LaBute again entered appearance on being called by the Court and still denied to have agreed to pay the plaintiffs interest, all which being duly considered by the Court judgment is recorded against the said Pierre

Meldrum & Park,
of Detroit,
Merchants and
Co-partners in
Trade,
vs.
Joseph Barron, of
the Parish of St.
Anne, Yeoman.

Meldrum & Park,
vs.
Pierre LaBute,
of the Parish of
L'assomption,
Yeoman.

LaBute that he pay to the said Meldrum & Park the principal sum of forty-nine pounds, six shillings and fivepence with of costs by them sustained.

Execution issued 24th September, 1789. Returnable 7th January, 1790.

| | | | |
|-------------|-------|----|----|
| Debt | £49 | 6 | 5 |
| Costs | 8 | 12 | 6 |
| | <hr/> | | |
| | £57 | 18 | 11 |

William Groesbeck, of Detroit,
Merchant,
vs.
Joseph Gamelin,
of the Parish of
L'assomption.

This action was entered the twenty-third of July last, and continued until this day. The defendant being called and appeared by Walter Roe his attorney, and the plaintiff by Charles Smyth his attorney, moved to continue the action for further testimony, which the Court ordered accordingly.

John Robert McDougall,
of Detroit,
Gentleman,
vs.
Isaac Germain,
Serjeant in the
65th Regiment of
Foot.

This action was continued last Court day the twenty-third of July last and ordered that the plaintiff proves his demand this day. The defendant being thrice called and not appearing, the plaintiff by his attorney Walter Roe, called as evidence Francois Chartré, who maketh oath that he resided upon Hog Island during a summer season and that the defendant in this cause put on sixty head of cattle in the month of June and took off forty in December and desired the witness to take care of the cattle and he would pay him well, and that if anything happened to the cattle to advertise the defendant. That there were sixty head of cattle in the field first and last, that the said Francois Chartré declares he is not interested in this cause.

(Signed upon the Minutes) FRANCOIS CHARTRE.
(His mark.)

The plaintiff's attorney moved to call James May as evidence, whom being of full age and duly sworn and declared not to be interested in this cause, says that he is a tenant on Hog Island and receives twenty shillings per head for cattle put on the island for the season, whether they remain or not.

(Signed on the Minutes.) JAMES MAY.

This action is continued and remain en deliberè for eight days.

This action was entered the twenty-third of July last and continued to this day for the plaintiffs to prove their allegations. Walter Roe, attorney for the plaintiffs, filed his replication and the defendant being thrice called and not appearing, it is ordered that a default be entered against him and the action be continued for eight days.

McKellip & Jacob,
of Detroit,
Merchants and
Co-partners in
Trade,
vs.
Claude Salaut, of
St. Anne, Yeoman.

This action was entered last Court day, the twenty-third of July, and continued until this day. The defendant being called and appeared, and the plaintiff moved for continuance of the action for eight days on account of not having his papers prepared. The same was ordered accordingly.

Thomas Smith,
vs.
J. Bte. Crete, of
St. Anne.

Walter Roe, attorney for the plaintiff, and the defendant entered appearance.

CAUSES UNDER
TEN POUNDS
STERLING.

James Fraser, as
Attorney to the
Estate of
Jno. Casety,
vs.
Dominique
LaBrosse.

Walter Roe, attorney for the plaintiff, and the defendant appeared and acknowledged the debt. The Court ordered judgment to be recorded against the defendant for the sum of one pound, twelve shillings and sixpence currency, with costs of suit being eleven shillings and eightpence.

William Pawling
vs.
Dominique
LaBrosse.

Walter Roe, attorney for the plaintiff, and the defendant entered appearance.

James Fraser, as
Attorney to the
Assignees of
Thomas Cox,
vs.
Dominique
LaBrosse.

Mr. Roe, for the plaintiff, and the defendant appeared and acknowledged the debt. The Court ordered judgment be recorded against the defendant for the sum of three pounds, five shillings and fivepence currency, and the sum of eleven shillings and eightpence for costs.

James Fraser
vs.
Dominique
LaBrosse.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered a default be entered against him.

James Fraser, as
Attorney to the
Assignees of
Thomas Finchley,
vs.
Dominique La-
Brosse.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered a default be entered against him.

James Fraser as
Attorney to the
Estate of
John Casety,
vs.
Pierre La Bute.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered a default be entered against him.

James Fraser, as
Attorney to the
Assignees of
Thos. Williams
& Company,
vs.
Dominique La
Brosse

James Fraser
vs.
Pierre La Bute.

Walter Roe, attorney for the plaintiff, and the defendant appeared and confessed the debt. The Court ordered judgment be recorded against the defendant for the sum four pounds, four shillings and fourpence halfpenny currency, and the sum of eleven shillings and eightpence costs.

Execution issued 24th September 1789. Returnable in one month.

| | | | |
|-------------|----|----|-----|
| Debt | £4 | 4 | 41½ |
| Costs | 0 | 11 | 8 |
| <hr/> | | | |
| | £4 | 16 | 0½ |

James Fraser, as
Attorney to the
Assignees of
Thomas Finchley,
vs.
Joseph Mallett.

Walter Roe, attorney for plaintiff, and the defendant appeared. The action is continued at the instance of the plaintiff's attorney.

James Fraser, as
Attorney to the
Assignees of
Thomas Finchley,
vs.
J. Bte. Rheume.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered a default be entered against him.

James Fraser, as
Attorney to the
Assignees of
the estate of
Thos. Williams
& Company,
vs.
J. Bte. Rheume.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered a default be entered against him.

Mathew Dolson
vs.
John Suittor.

Walter Roe, attorney for the plaintiff, and the defendant appeared. The action is continued for fifteen days for the plaintiff to prove his demand.

J. Bte. Geniack,
vs.
J. Bte. Laflam-
boise.

The parties appeared and for want of sufficient proof on the part of the plaintiff the action is continued for eight days.

George McClure
vs.
Andre Decaroux.

The parties appeared, and the defendant acknowledged to have purchased a watch from the plaintiff, but alleged to have paid the plaintiff's brother by the plaintiff's consent, but cannot produce a receipt. If the defendant should hereafter produce a receipt from plaintiff's brother the money must be returned. The Court ordered judgment be recorded against the defendant for the sum of four pounds, ten shillings currency, and the sum of eleven shillings and eightpence costs by him sustained.

Frederick Arnold
vs.
J. Bte. Leduck, fils.

Walter Roe, attorney for the plaintiff, and the defendant appeared, and by consent of parties Claude Rheume and Isaac Dolson are nominated to estimate the damages

in the detention of the plaintiff's horses and to call in the third person in case of difference, reserving to the Court the right of imprisonment of said horses, and to make their report in eight days.

Court adjourned to 27th of August, 1789.

T. S.

COURT OF COMMON PLEAS held in the Parish of L'assomption on Thursday, the twenty-seventh day of August, in the year one thousand seven hundred and eighty-nine.

Province of
Quebec.
District of Hesse.
27 August, 1789.
T.S.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

Walter Roe, attorney for the plaintiff, filed his declaration and the defendant appeared in person and confessed judgment, whereupon the Court ordered judgment to be recorded against the defendant for the sum of fourteen pounds, eighteen shillings and fourpence currency, and the sum of seven pounds, nine shillings and sixpence of costs by him sustained.

NEW CAUSES.

Jacques Charron
vs.
Pierre Prout.

Walter Roe, attorney for the plaintiff, filed his declaration, and the defendant being thrice called and not appearing, ordered that a default be entered against him.

John Askin, of
Detroit, Merchant,
vs.
William Lamothe.

Walter Roe, attorney for the plaintiff, filed his declaration and the defendant being thrice called and not appearing, ordered that a default be entered against him.

Catherine
Desriviere
Lamoinodiers,
vs.
Antoine Dagnio
Dequindre.

This action was continued the twentieth of August last by reason of a default, and this day the defendant was thrice called and not appearing, a second default is ordered to be entered against him, and Walter Roe, the plaintiff's attorney, agreed to continue the action for eight days longer, and accordingly the Court made it a rule.

OLD CAUSES
above ten pounds
sterling.

Jonathan
Schieffelin
vs.
Francis Fontenoy.

Charles Smyth, acting by procuration for the plaintiff, agreed to continue the action for eight days after the defendant being thrice called and the second default entered against him.

John Askin
vs.
Francis Fontenoy.

The same made a rule that this action be continued for eight days.

Jonathan
Schieffelin
vs.
John Visgar.

The defendant being thrice called and not appearing, ordered that a second default be entered against him, and Walter Roe, the plaintiff's attorney, agreed to continue this action for eight days, and accordingly the same being made a rule.

James May
vs.
Peter Leukes.

This action was continued the twentieth of August last. The defendant being called for the second time and appeared, and acknowledged his signature to the note in question.

District of Hesse.
T.S.

Be it remembered that on the twentieth of August last came before His Majesty's Court of Common Pleas for the said District James May, of Detroit, gentleman, by Walter Roe, his attorney, and then and there declared that the defendant was justly indebted to him in the sum of eleven pounds, five shillings currency, and the said Peter Leucks, having been summoned to appear to answer the plaint of the said James May in the said declaration set forth and after being thrice called, entered appearance, and eight days from the said twentieth of August given to the said James May to make proof of the allegations in his said declaration contained, whereupon on the twenty-seventh of August in the said year came the said James May by his said attorney and produced the said Peter Leukes' note of hand, the signature of which he the said Peter Leucks, who then appeared and acknowledged to be his proper hand-writing, whereupon the Court ordered judgment be recorded against the said Peter Leucks that he pay the said James May the sum of Eleven pounds, five shillings currency, with six pounds, eight shillings and twopence of costs by him sustained.

Execution issued 19th September, 1789. Returnable 7th January, 1790.

| | | | |
|-------------|-------|----|---|
| Debt | £11 | 5 | 0 |
| Costs | 6 | 8 | 2 |
| | <hr/> | | |
| | £17 | 13 | 2 |

John Gregory
of Montreal,
Merchant,
vs.
William Thorn,
of Detroit.

The defendant being thrice called and not appearing, ordered a second default be entered against him.

Walter Roe, attorney for the plaintiff, moved to prove his demand and to call James May then in Court as evidence in his behalf whom being of full age and not interested in anywise in the event of this action and

being duly sworn, declared that he had often seen the defendant Wm. Thorn write and verily believe that the name *Wm. Thorn* subscribed to the exhibit now filed by the plaintiff to be of his proper hand writing.

(Signed upon the Minutes.) JAMES MAY.

Be it remembered that on the twentieth of August, in the year one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, John Gregory, of Montreal, merchant in the Province of Quebec, by Walter Roe, his attorney, and then and there declared that the said William Thorn was justly indebted in the sum of sixty-seven pounds, twelve shillings and one penny currency, and the said William Thorn having been summoned to appear to answer the plaint of the said Jno. Gregory in the said declaration set forth, and being thrice called and not appearing, the default of said William Thorn was recorded and the eighth day from the said twentieth of August (the date of the return) given to the said John Gregory to make proof of the allegations in his said declaration contained: whereupon on the twenty-seventh of August, in the said year came the said John Gregory by his said attorney and made proof by the oath of James May, of Detroit, gentleman, that the name Wm. Thorn subscribed to a certain note of hand then by the said Jno. Gregory's attorney to the Court produced (and on which the demand of the said John Gregory in his declaration was grounded) was of the proper hand-writing of said William Thorn, and thereupon the said William Thorn being again thrice called and not appearing, the said John Gregory by his said attorney prayed that his second default might be recorded and that for the profit of such default obtained he might have judgment for his said debt and costs, all which being duly considered by the Court, judgment is recorded against the said William Thorn that he pay to the said John Gregory the sum of sixty-seven pounds, twelve shillings and one penny currency of this Province with of costs by him sustained, and interest from the twenty-ninth of July last, until perfect payment, on the said sum of sixty-seven pounds, twelve shillings and one penny.

District of Hesse.
T.S.

The defendant being called three times and not appearing, ordered that a second default be entered against him, and Mr. Roe, the plaintiff's attorney, moved for a further delay of eight days to prove his demand.

Leith & Shepherd.
vs.
William Thorn.

Isaac Williams
vs.
Jacques Charron.

Walter Roe, attorney for the plaintiff, and the defendant, appeared. Ordered a peremptory delay for one month.

Hugh Heward
vs.
John Askin.

Walter Roe, attorney for the plaintiff, and Charles Smyth acting by procuration for the defendant, and by consent of parties the Court order the action to continue for eight days.

Isaac Dolson
vs.
Joseph Pernier
dite Vade-
boncoeur.

Walter Roe, attorney for the plaintiff. The defendant appeared and by consent of parties, the Court order a continuance for eight days.

Meldrum & Park
vs.
Jean Bte. Crête.

Walter Roe, attorney for the plaintiff. The defendant appeared, and by consent of parties the Court order a delay of eight days.

John Urquhart
vs.
John Askin.

Charles Smyth, acting by procuration for plaintiff, filed replication and Walter Roe, for the defendant filed plea.

Richard Dobie
vs.
John Martin.
District of Hesse.
T.S.

Walter Roe, attorney for the plaintiff, the defendant being thrice called and not appearing. This is an action, the gist of which is a record of judgment in another Court. To this the defendant has pleaded that he owes nothing, but as he has set up no payment on release of judgment, I must presume the meaning of his plea to be the proper issue and a traverse of the record or judgment. It seems so to be understood by the replication of the plaintiff who again relies upon and proffers the record. The evidence filed is equally insufficient to support the action upon the rules of evidence either of the ancient or present laws of the Province, the office copy of the record being neither upon parchment or under seal; Wherefore the Court considers that judgment be entered as in case of a nonsuit.

William Groesbeck
vs.
Joseph Gamelin.

Mr. Charles Smyth, acting by procuration for the plaintiff, and Mr. Walter Roe, attorney for the defendant, entered appearance, and by consent of parties the action ordered to be continued for eight days.

McKellip & Jacob
vs.
Claude Salaut.

Walter Roe, attorney for the plaintiff. The defendant being thrice called and not appearing. It is ordered that a second default be entered against him, and for the want of sufficient proof on the part of the plaintiff that the defendant took the goods in question upon himself, eight days delay is allowed to prove his demand.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing.

John Robert
McDougall
vs.
Isaac Germain.

Province of
Quebec.
District of Hesse.
T.S.

Be it remembered that on the sixteenth day of July, in the year one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, John Robert McDougall, of Detroit, gentleman, in the said District, by Walter Roe, his attorney, and then and there declared that Isaac Germain, serjeant in the Sixty-fifth Regiment of Foot, was justly indebted to him in the sum of thirty pounds, nine shillings and sixpence, currency, for the grazing of cattle on Hog Island during the summer and autumn, one thousand seven hundred and eighty-eight, and that the said Isaac Germain, having been summoned to appear to answer the plaint of said John Robert McDougall, in his said declaration set forth, and being thrice called and not appearing, the default of the said Isaac Germain was recorded, and the eighth day from the said sixteenth of July, given to the said John Robert McDougall to make proof of the allegations in his said declaration contained, whereupon on the twenty-third of July, in the said year, came the said John Robert McDougall by his said attorney, and the said Isaac Germain being again thrice called and not appearing, the second default of the said Isaac Germain was recorded and a further delay was allowed to the said John Robert McDougall to make proof of his demand from the said twenty-third of July to the twentieth of August, following, upon which day the said Isaac Germain was thrice called and not appearing, and the plaintiff, by his said attorney, made proof by the oath of Francois Chartré that the said Isaac Germain had sixty head of cattle on Hog Island first and last, and by the oath of James May, Tenant of Hog Island, that he received twenty shillings per head for cattle put upon said Island for and during the season whether they remained or not, and from the said twentieth day of August the action remained en delibere until the twenty-seventh of the same month in the same year on which day the defendant was again thrice called and not appearing, all which being duly considered by the Court judgment is recorded against the said Isaac Germain, that he pay to the said John Robert McDougall the sum of thirty pounds, nine shillings and sixpence, currency of this Province, with interest from the said twentieth day of August until actual payment, and the sum of nine pounds, nine shillings and fivepence of costs by him sustained.

Execution 19th September, 1789. Returnable 7th January, 1790.

| | |
|-------------|-----------|
| Debt | £30 9 6 |
| Costs | 9 9 5 |
| | <hr/> |
| | £39 18 11 |
| Writ | 0 5 |
| | <hr/> |
| | £40 3 11 |

Alias fi. fa. issued 2nd October, 1789. Returnable the first Court day in June, 1790.

| | |
|------------------------|-----------|
| Debt | £40 3 11 |
| Subsequent costs | 1 15 0 |
| | <hr/> |
| | £41 18 11 |

Thomas Smith,
Esq.,
vs.
Jean Bte. Crête.

Walter Roe, of
full age and dis-
interested, acted
as Clerk and duly
Sworn.
Signed, W.D.P.

The parties appeared in person, and the plaintiff came forth and filed the report made on the account of Hugh Heward and John McPherson, being auditors mutually chosen by the parties interested, to which report they now both agree to, and the defendant thereupon confessed judgment.

Signed WALTER ROE.

District of Hesse.
T.S.

Be it remembered that on the twenty-third of July, in the year one thousand seven hundred and eighty-nine, came before his Majesty's Court of Common Pleas for the said District, Thomas Smith, Esquire, and then and there declared that Jean Baptiste Crête, of Detroit, was justly indebted to him in the sum of nine hundred and thirty-four pounds, fifteen shillings and threepence, currency of the Province of Quebec, and the said Jean Baptiste Crête having been summoned to appear to answer the plaint of the said Thomas Smith in the said declaration set forth, and the defendant being called and entered appearance, and twenty-eight days was allowed to the plaintiff to make proof of the allegations in his said declaration contained, whereupon on the twentieth of August, in the said year, came the said Thomas Smith and prayed continuance for eight days longer for to make proof of his allegations, which was granted with the consent of the defendant, and on the twenty-seventh of August and parties again appeared, and the plaintiff filed a report of auditors by them mutually chosen to which the defendant declared to have no manner of objections to the same and confessed judgment. Thereupon judgment is recorded against the said

Jean Baptiste Crête that he pay to the said Thomas Smith the sum of seven hundred and seventy-five pounds, six shillings and sixpence, currency of the Province of Quebec, with lawful interest from the twentieth of July last in the said year until actual payment and the sum of of costs by him sustained.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing. The plaintiff filed the defendant's note of hand.

Walter Roe, for the plaintiff, moved to mend his declaration, which was granted by the Court and ordered that a Rule be served upon the defendant to appear in this Court on Thursday next.

Walter Roe, for the plaintiff, filed Award and the defendant appeared and by consent of parties the action is continued for eight days.

The parties appeared, and for further testimony the action is continued for eight days.

The Court adjourned to 3rd September.

COURT OF COMMON PLEAS.

Thursday the 3rd day of September, 1789.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

John Smith, Pierre Sera dite Lavictoire, and Joseph Elam, sworn in this day as Bailiffs. T.S.

Walter Roe, for the plaintiff, filed his declaration and two notes of hand. - The defendant appeared and acknowledged the notes as set forth in the plaintiff's declaration; but for plea prayed continuance for eight days.

Walter Roe, attorney for the plaintiff, filed his declaration, and the defendant appeared in person and denied his signature to a certain note of hand as set forth in the plaintiff's declaration. The action is continued for eight days for the plaintiff to prove the note.

CAUSES UNDER
TEN POUNDS.
James Fraser as
Attorney to the
Assignees of
Thomas Finchley,
vs.
Dominique La
Brosse.

James Fraser, as
Attorney to the
Assignees of the
Estate of Thomas
Williams & Coy.,
vs.
Jean. Bte.
Rheaume.

Frederick Arnold
vs.
Jean Baptiste
Laduck, fils.

Francois Latour
vs.
Louis Trudel.

Province of
Quebec.
District of Hesse.
3 Sept., 1789.
T.S.

Bailiffs sworn.

James Fraser,
Curator to the
Succession of
Samuel Judah,
vs.
Charles Chene.

James Fraser,
Curator to the
Succession of
Samuel Judah,
vs.
Charles St. Obean.

Magdelaine Pel-
tier, spouse of
Jacques Peltier,
vs.
Laurent Maure.

The plaintiff filed her declaration, and the defendant appeared in person. The Court having taken the matter into consideration and find that the plaintiff is under coverture and not authorized by a letter of attorney from her husband. It is ordered that the action be dismissed.

Thomas Finchley
vs.
Jean Baptiste
Cecot.

Walter Roe, attorney for the plaintiff, filed his declaration, and the defendant appeared in person and confessed the debt as specified in a note of hand set forth in the plaintiff's Declaration.

Province of
Quebec.
District of Hesse.
T.S.

Be it remembered that on the third day of September, came before His Majesty's Court of Common Pleas for the said District, Thomas Finchley, by Walter Roe his attorney, and then and there declared that the defendant was justly indebted in the sum of twenty-one pounds, one shilling and 10d., currency of the said Province, and the said Jean Bte. Cecot having been summoned to appear to answer the plaint of the said Thomas Finchley in the said declaration set forth, and then and there before the said Court confessed judgment, whereupon judgment was accordingly recorded against the said Jean Bte. Cecot that he pay to the said Thomas Finchley the sum of twenty-one pounds, one shilling and tenpence, currency of said Province, with six pounds, seven shillings and sixpence of costs by him sustained.

Execution issued 19th September, 1789. Returnable 7th January, 1790.

| | | | |
|-------------|-------|---|----|
| Debt | £21 | 1 | 10 |
| Costs | 6 | 7 | 6 |
| | <hr/> | | |
| | £27 | 9 | 4 |

Thomas Finchley
vs.
Pierre Chene.

Walter Roe, for the plaintiff, filed his declaration and a note of hand. The defendant appeared and acknowledged the said note, but said he had made sundry payments on account which were not endorsed. The Court thereupon ordered the plaintiff to produce his books and prove the allegations as set forth in his declaration in eight days.

Jean Baptiste
Tourongeau,
L'assomption,
vs.
Francois Latour.

Walter Roe, attorney for the plaintiff, filed his declaration. The defendant appeared in person and denied that he owes anything to the plaintiff, that he has settled all accounts with him in proof of which he has filed an acquittance.

Walter Roe, for the plaintiff, filed declaration and the defendant being thrice called and not appearing. It is ordered that a default be recorded against him.

Richard Dobie,
of Montreal,
Merchant,

vs.
John Martin,
of Detroit,
Merchant.

Walter Roe, for the plaintiff, filed declaration, and the defendant appeared and denies to owe anything to the plaintiff. Mr. Roe, the plaintiff's attorney, replies that the defendant is indebted agreeable to his declaration, and on his motion it is ordered that a rule be entered for trial next Court day, the tenth instant.

James Fraser,
Attorney by Pro-
curation of
Thomas Cox,
vs.
Pierre LaBute, of
L'assomption.

Walter Roe, attorney for the plaintiff, filed his declaration, and the defendant personally appeared and acknowledged the debt specified by a note of hand now filed by the plaintiff.

James Fraser,
Curator to the
Succession of
Thos. Williams
and John Casety,
vs.
Renè Cloutier, of
L'assomption.

Be it remembered that on the third day of September, in the year one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, James Fraser, Curator to the Succession of Thos. Williams & Co'y., by Walter Roe, his attorney, and then and there declared that Rene Cloutier, of L'assomption, was indebted to him in the sum of forty-seven pounds, five shillings, currency of said Province, due by a note of hand, and the said Renè Cloutier having been summoned to appear to answer the plaint of the said James Fraser, and then and there before the said Court acknowledged the note as set forth in the plaintiff's declaration, whereupon judgment is recorded against the said Renè Cloutier that he pay unto the said James Fraser the sum of forty-seven pounds, five shillings, currency of said Province with of costs by him sustained, and the interest of six per cent. on the said forty-seven pounds, five shillings from the first of August last until perfect payment.

Province of
Quebec.
District of Hesse.
T.S.

Execution issued 19th September, 1789. Returnable 7th January, 1790.

Principal sum £47 5 0
Costs

Walter Roe, attorney for the plaintiff, filed his declaration, and the defendant being called and entered appearance.

James Abbott,
of Detroit,
Merchant,
vs.
Jean Bte. Campeau,
of St. Anne,
Yeoman.

Charles McCormick
vs.
Alexander McKee,
Esquire, of
Detroit, D. Agent
of Indian affairs.

Charles Smyth, attorney for the plaintiff, by special procuration filed his declaration, and Walter Roe, attorney for the defendant, entered appearance.

Antoine Jalbert
vs.
Jonathan
Schieffelin.

Charles Smyth, attorney for the plaintiff, by procuration filed his declaration. The defendant appeared and says that he owes nothing to the plaintiff, but that he is indebted to him two hundred and thirty-one livres, for which he prays to become an incidental plaintiff and filed the plaintiff's engagement subscribed by him at Detroit, and offers to bring proof that the defendant did not perform his engagement, and also files the account, items of which he begs leave to prove.

John Askin,
of Detroit,
Merchant,
vs.
William Lamothe,
Esq., of the same
place.

Walter Roe, for the plaintiff, and the defendant being thrice called and not appearing, ordered that the second default be recorded against him.

Province of
Quebec.
District of Hesse.
T.S.

Be it remembered that on the twenty-seventh day of August, in the year one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, John Askin, of Detroit, merchant, by Walter Roe, his attorney, and then and there declared that the defendant was justly indebted to him in the sum of twenty-three pounds, eleven shillings, currency of said Province, and the said William Lamothe having been summoned to appear to answer to the plaint of the said John Askin in the said declaration set forth, and being thrice called and not appearing the default of the said William Lamothe was recorded, and the eighth day from the said twenty-seventh of August given to the said John Askin to make proof of the allegations in the said declaration contained, whereupon on the third day of September, in the said year, came the said John Askin, by his said attorney, and the said William Lamothe being again thrice called and not appearing, the said John Askin, by his said attorney, prayed that his second default might be recorded, and that for the profit of such default obtained he might have judgment for his debt and costs, all which being duly considered by the Court judgment is recorded against the said William Lamothe, that he pay to the said John Askin the sum of seventy pounds, three pounds, eleven shillings, currency of the said Province, with interest from the twenty-sixth of August last until perfect payment and the sum of costs by him the said John Askin sustained.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered the second default be entered against him.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing.

Called as Evidence.

Mr. Charles Gouin, due Detroit, Marchand temoine applé le part du demandeur appre serment faite sur le Saint Evangelle à déclaré qu'il n'est aucunement interessé dans l'évenement de cette poursuit et quil à connaissance que le nommé Charles Bellard engagé du demandeur étté employer au service du defendeur l'hivert dernier, que le depositeur étté present a une dispute entre le demandeur et defendeur ou il à pris que l'homme étté engagé jusque au fin de Juin, et que'l quitté de service de Fontenoy au quators de Juin il refuser de tenir compte à M. Schieffelin de ce gage il dise que c'étté forfait par son desertion—que le depositeur avoit entendre dire que M. Schieffelin devoit avoir vingt ponds pour le service de son engagé jusque à la fin de Juin, que le dite Mr. Gouin avoit aucune connaissance de cette vingt ponds étté payer—et que le engager Bellard à laisser de service du defendant vers le cinq de Juin dernier.

(Signé) CHARLES GOUIN.

John Askin, junior, of full age and not interested in this cause, called as evidence on the part of the plaintiff and duly sworn, That he was present at the execution of the exhibit B, now filed in Court, and that he saw Charles Bellair make his mark at the foot thereof and knows him to be the same person who was transferred by Mr. Schieffelin into the service of Francis Fontenoy.

(Signed upon the Minutes),
JOHN ASKIN, JUN.

Be it remembered that on the twentieth day of August, in the year of our Lord one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, Jonathan Schieffelin, of Detroit, gentleman, by Walter Roe, his attorney, and then and there declared that Francis Fontenoy, of Saguinaw, trader, was justly indebted to him in the sum of twenty-four pounds, two shillings and sixpence, and the said Francis Fontenoy having been summoned to appear to answer the plaint of the said Jonathan Schieffelin in his said declaration set

Catherine
Desriviere,
Lamoindiers,
vs.
Her husband,
Antoine Dagainis
Dequindre.

Jonathan
Schieffelin
vs.
Francis Fontenoy,
of Saguinaw,
Trader.

Province of
Quebec.
District of Hesse.
T.S.

forth and being thrice called and not appearing, the default of the said Francis Fontenoy was recorded, and eight days allowed to the said Jonathan Schieffelin to make proof of the allegations in his said declaration contained, whereupon on the twenty-seventh day of August in the said year came the said Jonathan Schieffelin by his said attorney, and the said Francis Fontenoy being again thrice called and not appearing, the second default ordered to be recorded against him and the action to be continued for eight days longer by consent of the plaintiffs, and on the third of September in the same year came the said Jonathan Schieffelin again by his said attorney and made proof by the oath of Charles Gouin and John Askin, Junior, all which being duly considered by the Court judgment is recorded against the said Francis Fontenoy, that he pay to the said Jonathan Schieffelin the sum of twenty-four pounds, four shillings and sixpence, currency of said Province, with lawful Interest from the twentieth of July, last, until perfect payment and the sum of costs by him sustained.

George Leith and
Thomas Shepherd,
of Detroit,
Merchants and
Co-partners,
vs.
William Thorn.

Walter Roe, attorney for the plaintiff, filed a bond and the defendant being three times called and not appearing, called as evidence John McGregor of full age and not interested in the event of this action, and being duly sworn, "says to have seen the said William Thorn sign the exhibit A now filed in Court."

(Signed, on the Minutes), JOHN MCGREGOR.

Province of
Quebec.
District of Hesse.
T.S.

Be it remembered that on the twentieth of August, in the year one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, George Leith and Thos. Shepherd, of Detroit, merchants and co-partners in trade by Walter Roe, their attorney, and then and there declared that the said William Thorn was justly indebted to them in the sum of twenty-nine pounds, nine shillings, currency of the said Province, and the said William Thorn having been summoned to appear to answer the plaint of the said Leith and Shepherd in their said declaration set forth, and being thrice called and not appearing the default of said William Thorn was recorded, and eight days given to the said Leith and Shepherd to make proof of the allegations in their said declaration contained, whereupon on the twenty-seventh of August, in the said year, came the said Leith and Shepherd, by their said attorney, and prayed further delay to make proof of their allegation, and the said William Thorn was again thrice called and not appearing and the second de-

fault was recorded against him. On the third of September in the said year came the said Leith and Shepherd, by their said attorney, and made proof by the oath of Jno. McGregor that the name William Thorn subscribed to a certain note of hand then by the said Leith and Shepherd to the Court produced was of the proper hand writing of the said William Thorn, and the said William Thorn being again thrice called and not appearing, all which being duly considered by the Court, judgment is recorded against the said William Thorn that he pay to the said George Leith and Thomas Shepherd the sum of twenty-nine pounds, nine shillings, currency of the said Province, with of costs by them sustained with interest from the twenty-ninth of July last, until perfect payment.

Walter Roe, attorney for the plaintiffs, and Charles Smyth, acting by special procuration for the defendant, entered appearance and by consent of parties the action is continued for eight days.

Meldrum & Park,
of Detroit,
Merchants,
vs.
Jean Bte. Crête,
Timber Merchants.

Walter Roe, attorney for the plaintiff, and Charles Smyth, by procuration for the defendant. On motion of Mr. Roe the Court order the record to be made up.

Hugh Heward, of
Detroit, Gent.,
vs.
John Askin,
of the same place,
Merchant.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, the action is continued at the instance of Mr. Roe.

Isaac Dolson, of
L'assomption,
Yeoman,
vs.
Joseph Parnier,
dite Vadboncoeur.

Walter Roe, attorney for the plaintiff, and the defendant entered appearance and by consent of parties the action is continued for eight days.

McKillip and
Jacobs
vs.
Claude Solaut.

Charles Smyth, acting by procuration for plaintiff, and Walter Roe, attorney for defendant, and on motion of Mr. Smyth the action continued for trial in eight days.

William Groesbeck
vs.
Joseph Gamelin.

Charles Smyth, acting by procuration for the plaintiff, and Walter Roe, attorney for the defendant, on motion of Mr. Smyth this action to continue for trial in eight days.

John Urquhart,
of Detroit,
Gentleman,
vs.
John Askin.

Charles Smyth, acting by procuration for the plaintiff, and the defendant being thrice called and not appearing—called as evidence on the part of the plaintiff, William Christie, of full age and not interested and duly sworn and the exhibit marked A being shown to him and declared to have been present when the said Francis Fontenoy subscribed the initials of his name F. F. to the said exhibit.”

John Askin,
of Detroit,
Merchant,
vs.
Francis Fontenoy,
of Saguinaw,
Trader.

(Signed on the Minutes), WM. CHRISTIE.

Province of
Quebec.
District of Hesse.
T.S.

Be it remembered that on the twentieth day of August, in the year one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, John Askin, of Detroit, merchant, by Charles Smyth, his attorney, by special procuration, and then and there declared that the said Francis Fontenoy was justly indebted to him by note of hand in the sum of nine hundred and nineteen pounds, thirteen shillings and ninepence, currency, of this said Province, and that the said Francis Fontenoy, having been summoned to appear to answer the plaint of the said John Askin in his said declaration set forth, and being thrice called and not appearing the default of the said Francis Fontenoy was recorded, and eight days allowed to the said John Askin to make proof of the allegations in his said declaration contained and on the twenty-seventh of August in the said year came the said John Askin, by his said attorney, and the defendant being again thrice called and not appearing, upon which it was ordered that a second default be entered against him (and by consent of plaintiff a rule for continuance for eight days, whereupon on the third day of September in same year came the said John Askin, again by his said attorney, and made proof by the oath of William Christie that the letters F. F. to a certain note of hand then produced to the Court and on which the demand of the said John Askin in his said declaration was grounded, is the proper mark of the said Francis Fontenoy, and thereupon the said Francis Fontenoy, being again thrice called and not appearing, all which being duly considered by the Court, judgment is recorded against the said Francis Fontenoy that he pay to the said John Askin the sum of nine hundred and nineteen pounds, thirteen shillings and ninepence, currency of said Province, with nine pounds, seven shillings and sixpence, of costs by him sustained, and interest from the twentieth of July last, until actual payment.

| | | | |
|-------------|-------|----|---|
| Debt | £919 | 15 | 9 |
| Costs | 9 | 7 | 6 |
| | <hr/> | | |
| | £929 | 1 | 3 |

Execution issued. Returnable 24th June, 1790.

Jonathan
Schieffelin, of
Detroit, Gent.,
vs.
John Visgar, of
Saguinau, Trader.

Walter Roe, attorney for the plaintiff, and the defendant being three times called and not appearing—called as evidence on the part of the plaintiff Charles Gouin, of Detroit, merchant, not interested in this cause and duly sworn, and says, “Que il y ait connoissance de Mr. Schieffelin avez laissé du sucre chez Mr. Visgar quelle condition il se pas.

(Signé) CHARLES GOUIN.

Called the second evidence on the part of the plaintiff Robert Gourneau, of full age and not interested, and duly sworn and says, "Il sai, que dans le mois de Mai au commencement de Juin dernier que Mr. Schieffelin à déposer au chez Mr. Visgar dix quarts et deux barril du sucre que lui avez laisse pas que son batteaux étté trop charger, et que les quarts étté plus que trente gallons chaque."

(Signé) ROBERT GOURNEAU.
(Sa Mark.)

Called the third evidence on the part of the plaintiff of full age and not interested, and duly sworn and says that he does not know anything respecting the said sugar.

The action continued by consent of the plaintiff for eight days.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, ordered that a default be entered against him.

Meldrum & Park
vs.
Joseph Barron.

The sheriff made his return with divers oppositions annexed to the sale of the effects seized—and cannot any further proceed until the claims of the different opponents are first satisfied and paid; or secured upon the proceeds.

Thomas Cox
vs.
William Gyeaux.

In support of his opposition produces Jean Bte. Baubien and Andre Peltier, who being duly sworn depose and saith, First Jean Bte. Baubien: "Que Guillaume Gyeaux lui à dit plusieurs fois, il y ait deux mois meme que son nephew Nicholas Gyeaux opposent avec semmés chez lui en scociété douze meniot de bled fremment, douze minot de voine et une minot des poids et que lui croix dans sa conscience pour est veritable."

On the opposition
of Nicholas Gyeaux

(Signé) JEAN BTE. BAUBIEN.

The Second, Andre Peltier, que L'automne passer: "Nicholas Gyeaux l'opposent à proposer semmez la terre de son oncle a motie et laisser la sciene en park, qu'il sai qui Nicholas Gyeaux a fait la Garais chez son oncie, et que il croix dans sa conscience s'étté a mattier entre l'oncle et nephew."

(Signé) ANDRE PELTIER (sa marque
after read to the Deponent. T.S.)

The said Baubien being sworn further declares: "Que Guillaume Gyeaux et Charles Prout lui avez dit que ce derniere étté en simmenser chez le premiere une piece de

On the opposition
of Charles Prout.

bled fremment de une piece de voine a son proper profit.” On a question by Mr. Roe that plaintiff’s attorney further says: “Que ce qu’il entendu acclammé le recolt chez Gyeaux par Charles Prout, qui ce jour passer depuis l’instruction de procès.”

Nicholas Gyeaux, being sworn and not interested in this present claim and of full age says: “Que il y ont la terre son oncle a mattier. Prout avez demander permission de semmez pour lui meme une piece et qu’il y ait connoissance actuel que Prout avoit cultivier et simmensé cette piece sans aucune aide de Guillaume Gyeaux—que qu’il croix avoir cinq meniot de bled frommiant et quatre minot de voine.”

On the opposition
of Louis Gyeaux.

The opponent produces Nicholas Gyeaux his brother as evidence to support his claim, whereupon Mr. Roe, the plaintiff’s attorney opposed his testimony being received in as much as he is not a competent evidence as required by law “being a brother to the opponent”—the Court will consider of the objection; and Nicholas Gyeaux being sworn “Que appre l’instruction de ce procès mai devant le jugement rendu son oncle Guillaume Gyeaux lui a dit que une de ce vache ettoit a Louis Gyeaux le opposent que lui a livré la vache a son frere que lui a laisser dans le park de opposent avec les otre annimaux de defendant et qui cette vache et une de celle prix en execution.”

(Signed) NICHOLAS GYEAUX (sa mark
after being read to the Deponent. T. S.)

Court admits on
the opposition of
N. Gyeaux.

The produce of twelve bushels of wheat, twelve bushels of oats and one bushel of peas to be divided in equal parts, one-half to the deponent and one-half to be sold by the Sheriff for part satisfaction of the plaintiff’s judgment.

Court admits on
the opposition of
C. Prout.

The proceeds of five bushels of wheat and the proceeds of an Indian corn patch, situate about twelve acres from the River, which the Sheriff is hereby authorized not to take, and is, therefore, discharged of so much of the proceeds.

Court admits on
the opposition of
Louis Gyeaux.

The seizure of a small red cow is discharged, which the Sheriff will deliver up to him.

On the opposition
of Alexis Maisonneuve.

It being not sustainable the Court order the Sheriff to proceed without any further regard thereto.

The parties appeared, and after hearing their allegations the Court duly considered the same and thereupon ordered judgment to be recorded against Hypolite Lasalline, that he pay to the said J. Bte. Parry the sum of six pounds and tenpence, currency of Quebec, with of costs by him sustained.

CAUSES UNDER
TEN POUNDS
STERLING.

J. Bte. Parry
vs.
Hypolite Lasalline.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, the Court after taking the matter into consideration ordered judgment be recorded against the defendant, that he return the meat of a hog which he killed belonging to the plaintiff (or to pay him three pounds, New York currency) and pay the sum of costs by him sustained.

Philip Fox
vs.
Pierre Durand.

Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing.

Thomas Cox
vs.
Jordan Ivory,

Walter Roe, attorney for the plaintiff, and the defendant appeared. Upon confession of the debt judgment ordered to be recorded against the defendant, that he pay the plaintiff two pounds, eighteen shillings and one penny, and eleven shillings and eightpence of costs by him sustained.

Thomas Finchley
vs.
Joseph Mallet

Execution 3rd October, 1789. Returnable in one month.

| | |
|---------------|-----------|
| Debt | £2 18 11½ |
| Costs | 0 11 8 |
| | <hr/> |
| Halifax | £3 9 9½ |

Walter Roe, attorney for the plaintiff, and the defendant appeared and denied the note as set forth in the plaintiff's declaration—the action continued for eight days.

James Fraser,
Curator to the
Succession of
Samuel Judah,
vs.
Joseph Mallet.

The Court, after hearing the parties, ordered judgment be recorded against the defendant for the sum of six pounds, ten shillings and sixpence, currency, and eleven shillings and eightpence costs by him sustained.

Francois Billet
vs.
Mitchel Yack.

The parties appeared and after weighing the matter of difference the Court order the plaintiff to finish his work according to agreement, and the defendant to pay the said Francois Billet four pounds and sevenpence halfpenny, currency, and eleven shillings and eightpence of costs.

Francois Billet
vs.
Mitchel Yack, fils.

James Fraser,
Curator to the
Succession of
John Casety,
vs.
René Cloutier.

Walter Roe, attorney for the plaintiff, and the defendant in person appeared, and after weighing the matter of difference the Court order the defendant to pay the plaintiff the sum of six pounds, six shillings and sixpence halfpenny, currency, and eleven shillings and eightpence costs by him sustained.

James Fraser,
as Attorney to the
Estate of Thos.
Williams & Coy.,
vs.
J. Bte. Rheume.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, the action is continued at the instance of Mr. Roe.

James Fraser,
Attorney to the
Assignees of
Thomas Finchley,
vs.
Dominique La
Brosse.

Walter Roe, attorney for the plaintiff, and the defendant appeared.

The Court, after adjusting the matter of difference, ordered judgment be recorded against the said Dominique LaBrosse, that he pay unto the said James Fraser the sum of two pounds, eleven shillings and tenpence halfpenny, currency, with eleven shillings and eightpence of costs by him sustained.

Francois Latour
vs.
Louis Trudell.

The parties appeared and after adjusting the matter of difference judgment was recorded against the said Louis Trudell, that he pay unto the said Francois Latour ten pounds, currency; (in return to the plaintiff four hundred and fifty pounds of flour) with eleven shillings and eightpence costs by him sustained.

Frederick Arnold
vs.
J. Bte. Laduc,
fils.

The plaintiff appeared by Walter Roe, his attorney, and the defendant being called and appeared. The Court took into consideration the report of auditors upon the matter in dispute who were nominated by consent of the parties to report on their difference. Whereupon the Court order judgment be recorded against the said Jean Bte. Laduc fils, that he pay unto the said Frederick Arnold the sum of ten pounds of the currency of New York, equal to six pounds, five shillings, currency of Quebec, and the sum of costs by him sustained.

Mathew Dolson
vs.
John Suittor.

The parties appeared and after taking into consideration the difference between them the Court ordered that the said John Suittor pay unto the said Mathew Dolson the sum of nine pounds, eleven shillings and elevenpence, currency, and the sum of costs by him sustained.

Court adjourned to the 10th September.

Province of
Quebec.
District of Hesse.
10 September, 1789
T.S.

Court of Common Pleas held at L'assomption- on Thursday, the 10th day of September, 1789.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

The plaintiff appeared and filed his declaration and the defendant in person acknowledged the debt and agreement for the rent of a house, but that he had lost several articles out of the said house owing to the carpenters making repairs in the said house before his time was expired.

Jacques Peltier
vs.
Laurent Maure.

The plaintiff replied that he neither entered nor authorized anyone to enter the said house before the defendant's time was expired.

Be it remembered that on the tenth day of September, in the year of our Lord one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, Jacques Peltier, of the Parish of St. Anne, and then and there in person declared that the said Laurent Maure was to him justly indebted in the sum of twenty-seven pounds, sixteen shillings, currency of said Province, for the rent of a house, and the said Laurent Maure, having been summoned to appear to answer the plaint in the said declaration set forth, and then and there accordingly did appear and confessed the debt to be just, but pleaded he had lost several articles out of the said house owing to a certain Jean Bte. Crete, with his men, making repairs in the said house before his time was expired. The said Jacques Peltier replied that he neither entered himself nor authorized any person whatsoever so to do before the defendant's time was expired, all which being duly considered by the Court judgment is recorded against the said Laurent Maure, that he pay unto the said Jacques Peltier the sum of twenty-seven pounds, sixteen shillings, currency, and of costs by him sustained with interest from the eighth of September, last, instant, until perfect payment, with recourse against the said J. B. Crete for damages in his allegation set forth.

District of Hesse.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, but a letter was received from him setting forth his plea accompanied with a certificate, exhibit A, now filed.

Jean Baptiste
Petre
vs.
Alexander Harrow.

Charles Smyth, acting by procuration for the plaintiff, and Walter Roe, Esq., attorney for the defendant, entered appearance.

John Askin
vs.
Antoine Dequindre.

Charles Smyth, attorney for the defendant, filed his agreement with the plaintiff and produced Jno. Martin as evidence. The Court allowed the plaintiff eight days to prove his allegations.

CAUSES UNDER
TEN POUNDS
STERLING.
Antoine Boullard
vs.
Rich'd Pollard.

Hyacinth
Latourelle
vs.
William
Groesbeck.

The parties appeared and the defendant is ordered to give the plaintiff his account before eight days; and then if the defendant falls in debt to the plaintiff he has a recourse to the Court.

Thomas Cox
vs.
Jordan Ivory.

This cause stands over at the instance of Mr. Roe, the plaintiff's attorney. —

James Fraser,
Curator to the
Succession of
Samuel Judah,
vs.
Joseph Mallett.

The parties appeared, and on motion of Walter Roe, the plaintiff's attorney, the action is continued for fourteen days for the plaintiff to prove his allegations.

James Fraser,
Curator to the
Succession of
Thos. Williams
& Company,
vs.
J. Bte. Rheume.

Continued on motion of Mr. Roe, the plaintiff's attorney, for further testimony.

James Fraser,
Curator to the
Succession of
Sam'l Judah,
vs.
Charles Chene.

Walter Roe, attorney for the plaintiff, and the defendant appeared and confessed the debt as set forth in the plaintiff's declaration, after deducting two pounds, sixteen shillings, York.

Province of
Quebec.
District of Hesse.
T.S.

Be it remembered that on the third of September, in the year of our Lord one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, James Fraser, curator to the succession of Samuel Judah, by Walter Roe, his attorney, and then and there declared that the said Charles Chene was justly indebted to him in the sum of three hundred and twelve pounds, ten shillings, currency, by two notes of hand, and the said Charles Chene being summoned to appear to answer the plaint of the said James Fraser in the said declaration set forth and then and there acknowledged the debt but prayed continuance of the action for eight days, and on the tenth of the said month in the same year came the said Charles Chene, before the said Court, and there confessed judgment for the debt as set forth in the plaintiff's declaration excepting two pounds, sixteen shillings, York, which he had paid on account, all which being taken into consideration by the Court, judgment is recorded against the said Charles Chene, that he pay unto the said James Fraser the sum of three hundred and ten pounds, fifteen shillings, currency of the said Province, and nine pounds, six shillings and sixpence costs by him sustained with interest from the tenth of said month of September until perfect payment.

Execution issued 25th September, 1789. Returnable 7th January, 1790.

| | |
|-----------------------|-----------|
| Debt | £310 15 0 |
| Costs | 9 6 6 |
| <hr/> | |
| Quebec currency | £320 1 6 |

Walter Roe, attorney for the plaintiff, and the defendant appeared. The plaintiff called as evidence John Martin of full age, not interested and duly sworn, deposes that he saw the defendant, Charles St. Abeau, make his mark as his signature to the note in question and that the words "Charles St. Abeau," his mark around the cross in the exhibit A filed in this cause is of the handwriting of the deponent.

James Fraser,
Curator to the
Succession of
Samuel Judah,
vs,
Charles St. Abeau.

(Signed on the Minutes), JOHN MARTIN.

Be it remembered that on the third day of September, in the year of our Lord one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, James Fraser, curator to the succession of Samuel Judah of New York, deceased, by Walter Roe, his attorney, and then and there declared that the said Charles St. Abeau was justly indebted in the sum of seventeen pounds, seven shillings and fourpence, currency, and the said Charles St. Abeau having been summoned to appear to answer the plaint of the said James Fraser in the said declaration set forth, and there denied the debt and his signature to the said note, whereupon eight days was allowed to the plaintiff to prove his allegations as in his declaration contained, and on the tenth of September, in the same month and year came the said James Fraser again by his said attorney, and made proof by the oath of John Martin that the words Charles St. Abeau, his mark around the cross in the said note is of the proper handwriting of the deponent, and that he was present when the said Charles St. Abeau made his mark to the same as his signature, the said Charles St. Abeau being thrice called and not appearing, all which being duly considered by the Court, judgment is recorded against the said Charles St. Abeau that he pay unto the said James Fraser the sum of seventeen pounds, seven shillings and fourpence, currency of said Province, and the sum of... costs by him sustained, with interest from the first of September in the said month until perfect payment.

Prov. Quebec.
District of Hesse.
T.S.

Execution issued 25th September, 1789, and returnable 7th January, 1790.

| | |
|-------------|---------|
| Debt | £17 7 4 |
| Costs | |

Thomas Finchley
vs.
Pierre Chene.

Walter Roe, attorney for the plaintiff, and the defendant appeared. Mr. Roe moved to mend his declaration, which was granted by permission of the defendant.

Province of
Quebec.
District of Hesse.
T.S.

Be it remembered that on the third day of September, in the year one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, Thomas Finchley, by Walter Roe, his attorney, and then and there declared that the said Pierre Chene was justly indebted by a note of hand in the sum of fifty-eight pounds, fourteen shillings and sevenpence, currency of said Province, and the said Pierre Chene having been summoned to appear to answer the plaint of the said Thomas Finchley in the said declaration set forth, and then and there acknowledged the original debt to be just, but that he had made several payments on account—thereupon eight days was allowed the plaintiff to make proof of his allegations in his said declaration contained, and on the tenth of the said month came the said Thomas Finchley, by his said attorney, and moved to amend his declaration, and thereupon by admission of the said Pierre Chene he, the said P. Chene, is condemned to pay unto the said Thomas Finchley the sum of forty-eight pounds, eleven shillings and fourpence, currency of said Province, and eight pounds, eight shillings of costs by him sustained, with interest from the first of September on the principal sum until actual payment.

Jean Baptiste
Tourongeau
vs.
Francois Latour.

Walter Roe, attorney for the plaintiff, and the defendant appeared. The parties agreed to leave the accounts to arbitrators, and the plaintiff named on his part William Monforton and the defendant Francis Dubois, and in case of difference to call an umpire, whereupon the Court ordered a rule that they make their award in fourteen days.

Richard Dobie,
of Montreal,
Merchant,
vs.
John Martin,
of Detroit.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, the plaintiff called James Urquhart as evidence, and sworn of full age and not interested in this cause, and sayeth that he is acquainted with the handwriting of the defendant, and that the name "John Martin," subscribed to the exhibit A, being the note in question now filed in this cause, is of his proper handwriting.

(Signed on the Minutes), JAS. URQUHART.

Prov. Quebec.
Dist. Hesse.
T.S.

Be it remembered that on the third day of September, in the year of our Lord one thousand seven hundred and

eighty-nine, came before His Majesty's Court of Common Pleas for the said District, Richard Dobie, of Montreal, in the said Province, merchant, by Walter Roe, his attorney, and then and there declared that the said John Martin was justly indebted to him in the sum of three hundred and eighty-three pounds, seven shillings and threepence, currency of said Province, due by balance of a note of hand, and the said John Martin, having been summoned to appear to answer the plaint of the said Richard Dobie in his said declaration set forth, and being thrice called and not appearing the default of the said John Martin was recorded and the eighth day from the said third of September given to the said Richard Dobie to make proof of the allegations in his said declaration contained, whereupon on the tenth of September following, in the same year, came the said Richard Dobie, by his said attorney, and made proof by the oath of James Urquhart, that the name John Martin subscribed to a certain note of hand by the said Richard Dobie to the said Court produced, and on which the demand of the said Richard Dobie in his said declaration was grounded, was of the proper handwriting of the said John Martin, and thereupon the said John Martin, being again thrice called and not appearing, the said Richard prayed that his second default might be recorded and that for the profit of such default obtained he might have judgment for his said debt and costs, all which being duly considered by the Court judgment is recorded against the said John Martin, that he pay to the said Richard Dobie, the sum of two hundred and seventy-eight pounds, five shillings, of the currency of said Province of Quebec, with interest from the date of said note, the twenty-first of October, one thousand seven hundred and eighty-four, and eight pounds, fifteen shillings of costs by him sustained.

Execution issued 25th September, 1789. Returnable 7th January, 1790.

| | | | |
|-----------------------|------|----|---|
| Debt | £278 | 5 | 0 |
| Costs | 8 | 15 | 0 |
| <hr/> | | | |
| Quebec currency | £287 | 0 | 0 |

Walter Roe, attorney for the plaintiff, and the defendant appeared. The plaintiff, by his said attorney, moved to have the action stand over until the first Court day in November next, as a material witness in this cause is now absent in the Indian country—and filed two receipts, Ex. A. B.

James Fraser,
Attorney by
Procuration to
Thomas Cox,
vs.
Pierre LaBute.

Charles
McCormick
vs.
Alex'r McKee.

Charles Smyth, attorney for the plaintiff by special procuration, and Walter Roe, attorney for the defendant, filed his plea.

Antoine Jalbert
vs.
Jonathan
Schieffelin.

Charles Smyth, attorney for plaintiff, by special procuration and the defendant appeared in person, and called as evidence in the behalf of the defendant John McGregor, of full age and not interested, and duly sworn and says, "that he does not know anything respecting the matter in question." Likewise called as evidence on the behalf of the defendant Raphael Bellonger, of full age and not interested in this cause, and says: "Que lui ettoit en compagnie avec Antoine Jalbert quand le dite Jalbert avait laisser le service du defendeur le dix Septieme du Moi de Mai."

(Signed on the Minutes), RAPHAEL BELLONGER.
(Sa Mark.) T. S. Clk.

Catherine
Desriviere
Lamoinodiers
vs.
Her husband,
Antoine Dagnis
Dequindre.

Walter Roe, attorney for the plaintiff, filed a renunciation, the defendant being three times called and not appearing. The Court made a rule that the plaintiff do produce his evidence next Court day at nine o'clock in the morning.

Meldrum & Park
vs.
J. B. Crete.

Walter Roe, attorney for the plaintiff, and Charles Smyth, acting by procuration for the defendant. The plaintiff's attorney moved to mend his declaration, which the Court granted—entered upon a trial and the defendant objected against the accounts. Ordered, that the parties prove their respective accounts in eight days.

Hugh Heward
vs.
John Askin.

Walter Roe, attorney for the plaintiff, and Charles Smyth, acting by procuration for the defendant. After trial of the cause Mr. Roe moved for a discontinuance of the suit and the Court ordered the same to be discontinued accordingly.

Isaac Dolson
vs.
Joseph Pernier
dite Vadboncoeur.

Walter Roe, attorney for the plaintiff, and the defendant being called and not appearing.

District of Hesse.

Be it remembered that on the twentieth day of August, in the year of our Lord one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, Isaac Dolson, of L'assomption, yeoman, by Walter Roe, his attorney, and then and there declared that on the sixth day of April, in the year of our Lord one thousand seven hundred and eighty-six, for a valuable consideration he purchased "from John Askin,

of Detroit, merchant, a certain tract of land situate at the Petite Côte on the south side of the River Detroit, containing three acres in front by forty in depth, bounded in front by the said River Detroit and in the rear by unlocated lands, on the east north-east by a farm, the property of the plaintiff, and on the west south-west by John Wilson, to have and to hold the said premises with the appurtenances thereunto belonging to him and his heirs for ever, by virtue whereof the plaintiff, on the seventh day of April, one thousand seven hundred and eighty-six, entered upon the said premises and was possessed thereof; and the plaintiff being so quietly and peaceably possessed thereof, the said defendant afterwards, that is to say, on the seventh day of December, one thousand seven hundred and eighty-seven, violently entered into the said premises with the appurtenances the property of the plaintiff as aforesaid, and which he legally held from the said seventh of April, one thousand seven hundred and eighty-six, to the said seventh of December, one thousand seven hundred and eighty-seven, and ejected him out of said farm, and now forcibly retains possession thereof, together with his improvements thereon and farming utensils and other wrongs to the said plaintiff did to his great damage one thousand pounds," and the said Joseph Pernier dite Vadboncoeur, having been summoned to appear to answer the plaint of the said Isaac Dolson, in the said declaration set forth, and then and there acknowledged that the plaintiff was in peaceable and quiet possession of the premises in question, and that he did enter on the said premises in the manner and form as set forth in the plaintiff's said declaration, which being duly considered by the Court, it was ordered that the defendant put the plaintiff immediately in full possession of the said premises, and eight days allowed the said Isaac Dolson to make proof of the allegations in his said declaration contained, whereupon on the twenty-seventh day of August, in the said year, came the said Isaac Dolson, by his said attorney, and the said Joseph Pernier dite Vadboncoeur appeared, and by consent of parties it was agreed to continue the action for eight days more. And on the third of September following, came the said Isaac Dolson, by his said attorney, and the said Joseph Pernier dite Vadboncoeur being thrice called and not appearing, and the action continued for eight days further at the instance of the said Isaac Dolson's attorney. Whereupon on the tenth of September, in the said year one thousand seven hundred and eighty-nine, came the said Isaac Dolson, by his said attorney, and the defendant being again thrice called and not appearing, all which being duly considered

by the Court, judgment of the re-entry is recorded, and that the said Joseph Pernier dite Vadboncoeur pay unto the said Isaac Dolson, the sum of nine pounds, seventeen shillings, currency of the Province, for costs by him sustained.

Execution issued 2nd October, 1789, and returnable in one month.

Costs £9 17 0

McKillip, Jacobs
and Company,
of Detroit,
Merchants,
vs.
Claud Solaut, of
the same place,
Yeoman.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, called on the part of the plaintiffs, George Ironsides, as evidence, of full age and not interested, and duly sworn saith: "That he was present when the defendant made his mark to the exhibit X now filed in Court and knows it to be his proper mark, and that he wrote the body of the said exhibit at the request of the defendant."

(Signed on the Minutes), GEO. IRONSIDES.

District of Hesse.
T.S.

Be it remembered that on the twenty-third of July, in the year of our Lord one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, Messrs. McKillip, Jacobs and Company, of Detroit, merchants, by Walter Roe, their attorney, and then and there declared "That Claud Solaut, of Detroit, Yeoman, is justly indebted to them on a balance of account for goods, wares and merchandises sold and delivered to him, and for moneys paid, laid out and expended to and for the use of the said Claud Solaut in a sum of one hundred and seventy-nine pounds, twelve shillings and threepence of lawful money of the Province of Quebec, which sum although often demanded still remains due." and the said Claud Solaut having been summoned to appear to answer to the plaint of the said McKillip, Jacobs and Company, and then and there appeared and denied to owe anything to the said McKillip, Jacobs and Company, and that he only acted for them in the quality of a clerk, and twenty-eight days from the said twenty-third of July was allowed to the said McKillip, Jacobs and Company to prove their allegations in their said declaration contained, and on the twentieth of August, in the said year, came the said McKillip, Jacobs and Company, by their said attorney, and filed their replication that the said Claud Solaut was indebted in the manner and form as set forth in the said declaration, and the said Claude Solaut being thrice called and not appearing, the default of the

said Claud Solaut was recorded, and the action continued to the twenty-seventh of August, on which day the said Claud Solaut was again thrice called and not appearing, and the said plaintiff's attorney moved for further continuance to prove the allegations in their said declaration contained, whereupon on the third day of September the said Claud Solaut appeared and by consent of parties the action was continued again until the tenth of September in the same month, the day agreed and appointed for trial, and on which day the said Claud Solaut being thrice called and not appearing, and the plaintiff's attorney moved to bring forward his evidence, and George Ironside was duly sworn of full age and not interested, and declared "that he was present when the said Claud Solaut made his mark to a certain exhibit X filed in Court and knows it to be his proper mark, and that the body of the said exhibit was wrote by the said George Ironside by the request of the said Claud Solaut," all which being duly considered by the Court judgment is recorded against the said Claud Solaut, that he pay unto the said McKillip, Jacobs and Company, the sum of one hundred and seventy-nine pounds, twelve shillings and threepence, currency, with interest from the twenty-first of July, last, until actual payment, and eleven pounds, four shillings and sixpence of costs by them sustained.

Execution issued 25th September, 1789, and returnable 7th January, 1790.

| | | | |
|-----------------------|------|----|---|
| Debt | £179 | 12 | 3 |
| Costs | 11 | 4 | 6 |
| <hr/> | | | |
| Quebec currency | £190 | 16 | 9 |

Walter Roe, attorney for the defendant, entered appearance, and Charles Smyth, acting by procuration for the plaintiff, declined to act any further in his behalf, and the plaintiff, therefore, was thrice called and not appearing :

John Urquhart,
of Detroit,
Gentleman,
vs.
John Askin,
of Detroit,
Merchant.

Be it remembered that on the twentieth of August, in the year of our Lord one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the said District, John Urquhart, of Detroit, gentleman, by Charles Smyth, his attorney, by procuration and then and there declared that John Askin, of Detroit, merchant, is justly and truly indebted to him in the balance of account for receiving, storing and shipping twelve hundred bushels of corn at Fort Erie in the sum of thirteen pounds, nine shillings and eightpence, currency,

Province of
Quebec.
District of Hesse.
T.S.

which although often demanded still remains due, and the said John Askin having been summoned to appear to answer to the plaint of the said John Urquhart in the said declaration set forth, and being thrice called and entered appearance by Walter Roe, his attorney. On the twenty-seventh of August, in the same year, came the defendant, by his said attorney, and filed his plea, and the plaintiff's attorney filed his replication. On the third of September following, came the parties, by their respective attorneys, and on motion of the plaintiff, by his said attorney, the trial was fixed in eight days, whereupon on the tenth day of September the defendant appeared, by his said attorney, the day appointed for trial, and Charles Smyth, acting by procuration for plaintiff, refused to act any further in his behalf, on which the plaintiff was thrice called to pursue his action and not appearing, all which being duly considered by the Court judgment is recorded against the said John Urquhart that he pay the sum of, currency, of costs and the defendant be dismissed from this suit.

Jonathan
Schieffelin,
of Detroit,
Gentleman,
vs.
John Visgar, of
Saguinau, Trader.

Walter Roe, attorney for the plaintiff, and the defendant appeared and acknowledged to have received, belonging to the plaintiff, nine barrels, one tierce and two kegs of sugar, the exact weight he does not know, and that the defendant acknowledges it to be the same sugar now seized by the sheriff. And having raised his default for reason why, judgment should not be pronounced against him for the amount of the goods charged, and says there was a specific agreement between him and the plaintiff that such goods as he took up for his own use was to be charged at prime cost and expenses, but, the goods received were by him as a partner traded for the use of the Company, in proof of which he produces John McGregor, of full age and not interested, who says, "that to the best of his knowledge the defendant was to have goods for his own use at the Detroit price, and that he does not know the parties having any separate concerns at Saguinau, nor does he know of the defendant having any goods of his own but what belonged to the Company, and that the account produced against the defendant he says is not at the Detroit prices and charges to Saguinau, but charged more, and that he believes there was an agreement between the parties that the defendant should have the goods for his private use at prime cost and expenses to Saguinau."

(Signed) JOHN MCGREGOR.

The said John McGregor called again to estimate the value of said sugar, and says he thinks it worth one shilling,

New York currency, per pound. The action is continued for the Court to consider.

The parties appeared, by their respective attorneys, and on motion of Mr. Smyth, the plaintiff's attorney, by procurator, the action stands over for eight days for the testimony of William Monforton.

William Groesbeck
vs.
Joseph Gamelin.

This cause is continued for eight days at the instance of Mr. Roe.

OLD CAUSES
UNDER TEN
POUNDS STER-
LING.
Thomas Cox
vs.
Jordan Ivory.

The parties appeared and on motion of Mr. Roe, the plaintiff's attorney, the action is continued for fourteen days for further testimony.

James Fraser,
Curator to the
Succession of
Samuel Judah,
of New York,
deceased,
vs.
Joseph Malet, of
the Parish of St.
Anne, Yeoman.

Continued for eight days for further proof of the delivery of the articles in question stated in the plaintiff's account and declaration.

James Fraser,
Curator to the
Succession of
Thomas Williams
& Company,
of Detroit, Mer-
chant, deceased,
vs.
J. B. Rheume,
of St. Anne,
Yeoman.

Court adjourned to the 17th of September, 1789. T. S.

Court of Common Pleas, Thursday, the 17th day of September, 1789.

Province of
Quebec.
District of Hesse.
17 Sept., 1789.
T.S.

Present: The Honourable William Dummer Powell, Esquire, first Judge of said Court, etc.

Walter Roe, attorney for the plaintiff, filed his contract of marriage and the defendant appeared. On motion of Mr. Roe (the plaintiff's said attorney) William Monforton was called as evidence, of full age and not interested, and duly sworn, says: "That he saw the plaintiff, Catharine Desriviere Lamoinodiers Dequindre sign her name to the exhibit A, filed in Court the tenth day of September instant."

Catharine Des-
riviere LaMoin-
odiers Dequindre
vs.
Her husband,
Antoine Dagnis
Dequindre.

(Signed) WM MONFORTON, Notary Public.

Called as evidence, Francois Perthuir, who is produced by Mr. Roe, the plaintiff's attorney, being of full age and not interested, and duly sworn.

Question 1st by Mr. Roe, the plaintiff's attorney: "Si le temoin connoit Antoine Dagnis Dequindre le defendant dans cette cause?" Answer: "Oui!"

Question 2nd by Mr. Roe: "Si lui connoit les ettat de ces affair?" Answer: "Que non."

Question 3rd by Mr. Roe: "Avez vous entendu si avoit une seizer a chez lui?" Answer: "Que lui avoit entendre dire."

Question 4th by Mr. Roe: "Avez vous entendre dire que ce meubles ettés vendû, et par qu'il?" Answer: "Que lui avoit entendû dire que l'ont etté vendû a l'encan."

Question 5th by Mr. Roe: "Si l'ont etté vendû par le Sheriffe?" Answer: "Je ne sai pas."

(Signed) PERTHUIR.

On motion of Walter Roe, the plaintiff's attorney, William Monforton was called again and questioned:

Question 1st by Mr. Roe: "Si il connoit le defendant dans cette cause?" Answer: "Que oui!"

Question 2nd by Mr. Roe: "Si lui a connaissance que il y ait une seizer au chez le defendant?" Answer: "Que il entendû dire."

Question 3rd by Mr. Roe: "Si lui a connaissance qui ces effets etté vendû par le Sheriffe?" Answer: "Que lui avoit entendû dire que les effets etté vendû dans la Cour de Sheriffe."

Question 4th by Mr. Roe: "Si il connoit les ettat des affair du defendant?" Answer: "Que il connoit pas possitivement les ettat des son affair, mai qu'il doit beaucoup et pas grand bien pour satisfaire."

(Signed) WM. MONFORTON, Notary Public.

This action stands over to another Court, on motion of Mr. Roe.

Robert Gowie
vs.
Thomas McCrea.

Walter Roe, attorney for the plaintiff, filed declaration, and Charles Smyth, attorney by procurator for defendant, entered appearance.

Elizabeth Malcolm
vs.
Her husband,
James Donaldson.

The plaintiff filed declaration and Walter Roe, attorney for the defendant, entered appearance.

George Meldrum
and William Park,
of Detroit,
Merchants and Co-
partners in trade,
vs.
Joseph Barron,
of St. Anne.

Walter Roe, attorney for the plaintiff, filed his declaration and the defendant appeared in person and moved for fifteen days delay on account of his family being in a bad state of health, which the Court granted.

Jean B. Petre, of
St. Anne, Yeoman,
vs.
Capt. Alexander
Harrow, of the
Naval Dept.

Walter Roe, attorney for the plaintiff, and the defendant being thrice called and not appearing, Mr. Roe moved to bring the action to trial next Court, and the same was granted.

Walter Roe, attorney for the plaintiff, filed a certificate, which was acknowledged by Mr. Smyth, acting by procuration for the defendant, as per exhibit Y now filed in Court. The Court will be ready to pronounce judgment the next Court day.

Jonathan
Schieffelin,
of Detroit,
Gentleman,
vs.
John Visgar, of
Saguinau, Trader.

Walter Roe, attorney for the plaintiffs, and Charles Smyth, acting by procuration for the defendant, appeared, and by consent of parties it is ordered that Charles Morran and John Askin, Esquire, do report the value of the wood and timber delivered by the defendant to the plaintiff by virtue of an agreement dated the tenth day of October, in the year one thousand seven hundred and eighty-nine. agreeable to the accounts of delivery (exhibits H., I.) and that their report on the delivery of the value of such wood be made in eight days.

George Meldrum
and William Park,
of Detroit,
Merchants,
vs.
J. B. Crete.

That John Askin and William Robertson, Esquires, do credit the detailed accounts of articles furnished by the plaintiffs to the defendant for which he is charged by them in the several exhibits C, D, E, F, H, I, and do report the overcharges above the current prices of that day, if any there be on any of the articles so detailed.

On suggestion of Walter Roe, for the plaintiff, the defendant has neglected to file his accounts agreeable to the rule of the tenth inst. It is ordered that unless the defendant do comply therewith in three days after notification of this rule, that the arbitrators do proceed *ex parte*.

J. B. Tourongeau
vs.
Francois Latour.

(Signed on the Minutes), W. D. P.

Charles Smyth, acting by procuration for the plaintiff, filed declaration and the defendant being thrice called and not appearing. The plaintiff's attorney filed a note of hand and called as evidence in his behalf James McDonell, of full age and not interested, and duly sworn, says: "That he saw the defendant sign his name to the exhibit A, being a letter of attorney now filed in Court."

William Robertson
vs.
Thomas McCrea.

(Signed on the Minutes), JAMES McDONELL.

The Court continued the action for eight days, and if the defendant does not appear then to take off the default, judgment will be pronounced against him.

Charles Smyth, acting by procuration for the plaintiff, and Walter Roe, attorney for the defendant, moved that: inasmuch as no cause is shown on the part of the plaintiff why he should not proceed to the proof of his demand

William Groesbeck,
of St. Anne,
Merchant,
vs.
Joseph Gamelin,
of L'assomption,
Trader.

agreeable to the rule of the tenth instant, prays the action be dismissed with costs. The adverse party moved for further continuance eight days in order to bring his proof.

Province of
Quebec.
District of Hesse.
T.S.

Be it remembered that on the twenty-third of July, in the year of our Lord one thousand seven hundred and eighty-nine, came before his Majesty's Court of Common Pleas for the said District, William Groesbeck, of Detroit, merchant, by Charles Smyth, his attorney by procuration, and then and there declared "that the defendant was justly and truly indebted to him by balance of account for goods, wares and merchandise sold and delivered in the sum of two hundred and thirty-one pounds, three shillings and sevenpence, money of the late Province of New York, which, although often demanded, still refused to pay and satisfy." And the said Joseph Gamelin of the Parish of L'assomption, trader, being summoned to appear to answer the plaint of the said William Groesbeck in the said declaration set forth and entered appearance by Walter Roe, his attorney. The action is continued to the twentieth of August in the same year, on which day the defendant appeared, by his said attorney, and the plaintiff, by his said attorney, moved to continue the action for eight days for further testimony, which was granted by the Court. And on the twenty-seventh of August in the same month and year, came the parties before the said Court, by their said attorneys, and mutually consented to continue the action again for eight days. On the third of September in the same year, came again the said parties, by their said attorneys, and on motion of Charles Smyth, the plaintiff's attorney, the Court granted a further delay of eight days. On the tenth of September in the same year came again the parties, by their respective attorneys, and Charles Smyth, the plaintiff's attorney, again moved for a further continuance for eight days for the testimony of William Monforton, who is a material witness in this cause, and whereupon the seventeenth day of September in the same month, came the said parties, by their respective attorneys, and Charles Smyth, attorney for the plaintiff, again moved for further continuance, whereupon the defendant's attorney, Walter Roe, moved to the Court that: "Inasmuch as no sufficient cause is shown on the part of the plaintiff why he should not proceed to the proof of his demand agreeable to the rule of the tenth instant, prayed the action be dismissed with costs." All which being duly considered by the Court judgment of nonsuit is recorded against the said William Groesbeck, that he pay the sum of currency of costs accrued in the premises.

Charles Smyth, acting by procuration for the plaintiff, and Walter Roe, attorney for the defendant. The plaintiff's attorney moved to mend his declaration which the defendant's attorney objected, otherwise the non-payment of costs, whereupon it was ordered, on motion of Mr. Smyth for plaintiff, that the cause be tried in eight days.

Charles McCormick
vs.
Alex. McKee.

After hearing the difference of the parties the Court ordered judgment to be recorded against the said Jacob Bougart, that he pay unto the said Geo. Deacons the sum of thirty-seven shillings and fourpence, New York currency, and fourteen shillings and eightpence, currency of Quebec, of costs by him sustained.

CAUSES UNDER
TEN POUNDS
STERLING.

Geo. Deacons
vs.
Jacob Bougart.

Walter Roe, for the plaintiff, and the defendant appeared, and on motion of the plaintiff the action is continued for fifteen days.

Thomas Cox
vs.
Jordan Ivory.

The parties appeared and for want of a sufficient proof on the part of the plaintiff the action is dismissed with costs.

Antoine Boullard
vs.
Richard Pollard.

After hearing the allegations of the parties the Court ordered judgment be recorded against the said Joseph Penout, that he pay unto the said André Decaroux the sum of ten pounds, twelve shillings, and the sum of costs by him sustained, being both of the currency of New York.

André Decaroux
vs.
Joseph Penout.

| | |
|-----------------|----------|
| Debt | £10 12 0 |
| Costs | |
| N. Y. currency. | |

W. Roe, attorney for the plaintiff, the defendant appeared and after hearing the allegations of the parties judgment is recorded against the said Joseph Barron, that he pay the said Thomas Finchley the sum of eight pounds, fourteen shillings and fourpence halfpenny, currency, and ten shillings and eightpence costs by him sustained.

Thomas Finchley
vs.
Joseph Barron.

| | |
|-----------------|---------------|
| Debt | £8 14 4½ Hfx. |
| Costs | 0 10 8 |
| | <hr/> |
| | £9 5 0½ |
| Execution | 0 1 0 |
| Bailiff | 0 4 0 |

Execution issued 3rd October, 1789, and returnable in one month.

James Fraser,
Curator to the
Succession of
Samuel Judah,
vs.
Jos. Barron.

Walter Roe, attorney for the plaintiff, and the defendant appeared in person. After hearing the allegations and duly weighing the difference, judgment is recorded against the said Joseph Barron, that he pay unto the said James Fraser the sum of four pounds, eighteen shillings and sixpence, currency, and ten shillings and eightpence of costs by him sustained.

| | |
|-----------------|--------------|
| Debt | £4 18 6 Hfx. |
| Costs | 0 10 8 |
| <hr/> | |
| | £5 9 2 |
| Execution | 0 1 0 |
| Bailiff | 0 4 0 |

Execution issued 3rd October, 1789, and returnable in one month.

Jean Marie La
Bathe
vs.
Joseph Castillion.

The parties appeared and on confession of the debt by the defendant judgment is recorded against the said Joseph Castillion, that he pay unto the said Jean Marie LaBathe the sum of three pounds, ten shillings and twopence, currency, and eleven shillings and eightpence of costs by him sustained.

| | |
|---------------|---------|
| Debt | £3 10 2 |
| Cost | 0 11 8 |
| <hr/> | |
| | £4 1 10 |
| Writ | 0 1 0 |
| Bailiff | 0 4 0 |

Execution issued and returnable in one month.

John Askin,
Esquire,
vs.
Antoine Dequindre,
of St. Anne.

Charles Smyth, acting by procuration for the plaintiff, and Walter Roe, attorney for the defendant, moved for continuance of the action, which was granted.

Hyacinth Latourell
vs.
William Groesbeck.

The plaintiff is dismissed from his action and to pay costs of suit.

Antoine Jalbert,
of Detroit,
Labourer,
vs.
Jonathan
Schlieffelin, of the
same place, Trader.

Charles Smyth, attorney for the plaintiff, and the defendant appeared in person.

Province of
Quebec.
District of Hesse.
T.S.

Be it remembered that on the third day of September, in the year of our Lord one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common

Pleas for the said District, Antoine Jalbert, of Detroit, labourer, by Charles Smyth, his attorney by procuration, and then and there declared: "That Jonathan Schieffelin, of Detroit, trader, some time in the autumn of last year when it is customary amongst traders to engage labourers for the purpose of going into the Indian country to assist them in their trade with the Indians, did, by a verbal agreement, engage the said Antoine Jalbert to go with him to Saguinaw, an Indian Post, for the purpose aforesaid, and did promise and undertake to pay him, the said Antoine Jalbert, the sum of twenty pounds, sixteen shillings and eightpence, Halifax currency, and also to furnish him with wholesome meat, drink and lodgings, provided he, the said Antoine Jalbert, should well and truly serve him, the said Jonathan Schieffelin, from the day of the said agreement until the fifteenth day of May, one thousand seven hundred and eighty-nine, when he was to receive his wages as aforesaid and be discharged and set at liberty from all further service to him, the said Jonathan Schieffelin, in consequence of the said agreement. That the said Antoine Jalbert did, in every respect, perform his duty as a good and faithful servant during the said period, and at the expiration thereof did expect to receive his wages as aforesaid; but the defendant, without any reasonable cause whatsoever, absolutely refused to pay him the same, and still doth refuse to pay him the said sum of twenty pounds, sixteen shillings and eightpence, Halifax currency, so long and justly due." And the said Jonathan Schieffelin, having been summoned to appear to answer the plaint of the said Antoine Jalbert in the said declaration set forth, and then and there appeared and verbally denied to owe anything to the said Antoine Jalbert, but on the contrary averred that the said Antoine Jalbert owed him two hundred and thirty-one livres, for which he prayed to become an incidental plaintiff, and filed the said Antoine Jalbert's engagement subscribed by him at Detroit, and offered to bring proof that the said Antoine Jalbert did not perform his engagement, and produces his account, items of which he begged leave to prove. The action continued to the tenth of the same month, being eight days' delay, on which day the parties again appeared, and the said Jonathan Schieffelin produced as evidence on his part John McGregor, of full age and not interested, and duly sworn, "declared to know nothing of the matter in question." Likewise the said Jonathan Schieffelin called as evidence on his behalf Raphael Bellonger, of full age and not interested, who declares, "that he was in company with the said Antoine Jalbert when he left the service of the said

Jonathan Schieffelin, which was the seventeenth of last May." The action was continued for eight days further, whereupon the seventeenth of the same month of September, in the same year, came again the said Antoine Jalbert, by Charles Smyth, his said attorney, and also the said Jonathan Schieffelin, the defendant in this cause, and after the allegations of the parties being duly considered by the Court the action is dismissed and the said Antoine Jalbert, plaintiff in this cause, to pay the sum of....., currency, of costs accrued in the premises.

Court adjourned to the 24th of September, 1789. T. S.

Province of
Quebec.
District of Hesse.
24 September, 1789.
T.S.

Court of Common Pleas, held at L'assomption, District of Hesse, in the Province of Quebec, this 24th day of September, 1789.

Present: The Honourable William Dummer Powell, Esq., First Judge of said Court, etc.

Angus McIntosh,
of Detroit,
Merchant,
vs.
Jean Bte.
Rheaume, of the
same place.

Walter Roe, attorney for the plaintiff, filed his declaration and the defendant being thrice called and not appearing, it is ordered that a default be recorded against him.

Francois Barbeau
vs.
Pierre Durand.

Charles Smyth, acting by procuration for the plaintiff, filed declaration and exhibits A. B., and the defendant after being thrice called entered appearance.

Catherine
Desriviere
Lamoinodiers
Dequindre
vs.
Her husband,
Antoine Dagnis
Dequindre.

The defendant being thrice called and not appearing, Walter Roe, the plaintiff's attorney, moved to let the action stand over for eight days, his witnesses not being ready.

William Robert-
son, of Detroit,
Merchant,
vs.
Thomas McCrea.

Charles Smyth, acting by procuration for the plaintiff, and the defendant being thrice called and not appearing, it is ordered that the second default be recorded against him and the eighth day from this date be for trial.

Robert Gowie
vs.
Thomas McCrea.

Charles Smyth, acting by procuration for the defendant, filed his plea, denying the debt as set forth in the plaintiff's declaration and Walter Roe, attorney for the plaintiff, replied verbally that the defendant is indebted to the plaintiff in the sum of two hundred and thirty-nine pounds, eleven shillings currency, in manner and form as set forth in his declaration which he prays may be enquired of by the Court, and the said plaintiff's attorney moved for trial next Court day being the first of October next, which the Court ordered accordingly.

The plaintiff says that the defendant detains fifty pounds sterling in his hands sent to her by her friends in Scotland. Mr. Roe, attorney for the defendant filed a plea and denies to detain any sum of the plaintiff's whatever. The Court ordered a rule for trial in eight days and the plaintiff then to bring forward his proof.

Isabella Malcolm
vs.
Her husband,
James Donaldson.

Walter Roe, attorney for the plaintiff, filed a note of hand and moved for trial next Court day the first of next October which was granted, and Charles Smyth, attorney by procuration to the defendant, filed a letter of attorney from the defendant to him.

Jean Bte. Peter,
of St. Anne,
Yeoman,
vs.
Alexander Harrow.

Walter Roe, attorney for the plaintiffs, filed a report of auditors respecting the plaintiff's accounts, and the defendant appeared by Charles Smyth, his attorney, and moved for continuance eight days in order to prove a demand respecting two notes of hand and a batteau lost by the plaintiffs, the property of the defendant.

George Meldrum
and Wm. Park,
of Detroit,
Merchants,
vs.
J. Bte. Crete.

Walter Roe, attorney for the plaintiff, and the defendant appeared in person and declared to have no objections to the report of auditors now filed in Court by the plaintiff's attorney to which the defendant had before agreed to.

Jean Baptiste
Tourongeau,
of Detroit,
Yeoman,
vs.
Francois Latour,
of the same place,
Yeoman.

Be it remembered that on the third day of September, in the year of our Lord one thousand seven hundred and eighty-nine, came before His Majesty's Court of Common Pleas for the District of Hesse, Jean Bte. Tourongeau, of Detroit, yeoman, by Walter Roe, his attorney, and then and there declared: "that the defendant was justly and truly indebted to him in the sum of one hundred and sixty-two pounds, ten shillings and fivepence currency of the Province of Quebec for divers goods, wares and merchandise sold and delivered to him, and for monies paid, laid out and expended to and for the use of the defendant and likewise for monies had and received by the defendant, the property of the plaintiff agreeable to account annexed to the declaration, which the defendant refuses to pay," and the said Francois Latour, the defendant, having been summoned to appear to answer the plaint of the said Jean-Bte. Tourongeau in the said declaration set forth and then and there denied to owe anything to the plaintiff, that he had settled all accounts with him, in proof of which he filed an acquittance. On the tenth of said month of September, the parties again appeared and mutually agreed to leave the accounts to be decided by two arbitrators, and the said Jean Bte. Tourongeau named on his part William Monforton and

District of Hesse.
T.S.

the said Francois Latour named on his part Francois Dubois, and in case of their differing in opinion to call an umpire and thereupon the Court granted a rule that the said arbitrators do make their award in fourteen days. On the seventeenth of the said month of September, Walter Roe, attorney for plaintiff, moved to the Court that the said Francois Latour had not filed his accounts agreeable to the rule of the tenth instant. The Court ordered that unless the said Francois Latour do comply therewith in three days after the notification of this rule, that the arbitrators do proceed *ex parte*. And on the twenty-fourth of the said month of September came again the said Walter Roe, attorney for the plaintiff, and filed the award of the arbitrators and the defendant, Francois Latour, appeared in person and then and there declared to have no objections to the award now filed in Court, whereupon the Court after duly considering the same, ordered judgment to be recorded against the said Francois Latour, the defendant in this cause, that he pay unto the said Jean Bte. Tourongeau, the plaintiff, the sum of forty-seven pounds, three shillings and elevenpence halfpenny, currency, with interest thereon computed from the thirtieth day of August last until actual payment and the sum of thirteen pounds, six shillings and sixpence of costs by him sustained.

| | | | |
|-----------------|-------|----|-----|
| Debt | £47 | 3 | 11½ |
| Costs | 13 | 6 | 6 |
| | <hr/> | | |
| | £60 | 10 | 5½ |
| Execution | 0 | 5 | 0 |

T. S.

Charles McCormick
vs.
Alexander McKee.

Charles Smyth, acting by procuration, attorney for the plaintiff, moved to have his name discontinued in this suit, and upon which the plaintiff appeared for himself and Walter Roe, attorney for the defendant, moved for continuance until the arrival of Isadore Chene, Simon Girty and Capt. Caldwell, material evidences now absent and necessary for the issue, whereupon the Court granted a rule accordingly.

Isaac Williams
vs.
Jacques Charron.

Walter Roe, attorney for the plaintiff, and the defendant appeared in person, and by consent of parties the peremptory rule in this cause is extended until next Thursday.

John Askin
vs.
Antoine Dequindre.

Walter Roe, attorney for the defendant, filed his plea, and Charles Smyth, acting by procuration for the plaintiff

replied verbally that the defendant is indebted in manner and form as set forth in his declaration and prayed judgment, then moved for trial in eight days and the Court granted a rule accordingly.

NOTE.

The first 36 pages of the manuscript of the following record are missing. It is probable they contained the Minutes of the Court from the 24th September, 1789, to the 19th May, 1791.

Roe, attorney for plaintiff, filed declaration. Defendant personally appeared and for plea says that he expected the plaintiff would wait for payment as he had not wherewithal to satisfy him, especially as his land was mortgaged for the money.

Defendant acknowledged the obligation.

Judgment for the same agreeable to the terms of plaintiff's declaration, one hundred and fifty-five pounds, sixteen shillings and eightpence Halifax, with interest from 12th May, 1791. T. S.

Execution issued 9th June, returnable 2nd Court in December next.

| | | | |
|---------------|------|----|---|
| Debt | £155 | 16 | 8 |
| Cost | 9 | 6 | 6 |
| <hr/> | | | |
| Halifax | £165 | 3 | 2 |

T. S.

Roe for plaintiff, filed declaration. Default. T.S.

Geo. McDougall
vs.
Geo. Lyons.

Roe for plaintiff, ordered the opposition for trial in four weeks and that notice be given to the opponent, and that a subpoena be given Mr. Roe for Mr. Benac to appear in Court at that time and bring the original deed with him.

John Askin
vs.
Ettienne Latour
dit Bellard, on the
opposition of
Daniel McKillip.

Court adjourned to 26th inst. T. S.

COURT OF COMMON PLEAS, holden at L'assomption the 26th of May, 1791.

Province of
Quebec.
District of Hesse.
26 May, 1791.

Present: William Dummer Powell, Esquire, First Judge of said Court.

Parties appeared. Plaintiff non-suited for want of proof. T. S.

James Turner
vs.
Wm. Tucker.

CAUSES ABOVE
TEN POUNDS.
James May
vs.
James Fleet.

Jos. Thibeault
vs.
J. B'e. Roucout.

Roe for plaintiff moved for trial next Court day.
Ordered accordingly; defendant not appearing. T.S.

Mr. Roe, for plaintiff, filed declaration and mortgage.
Ex. A. The defendant appeared and acknowledges that he is indebted the sum demanded but for plea says that the mortgage contained in the deed dated 19th June, 1790, ought not to have any effect. The plaintiff replies that by the first deed of 30th Oct., 1783, the premises as stated in his declaration are already mortgaged and that such after deed was only a ratification of the former, and prays judgment. Continued *en deliberé*. T. S.

George Lyons
vs.
Francois Chabert,
Esquire.

Roe appeared for plaintiff. James May sworn. That the plaintiff having this day filed the affidavit of James May purporting that the best and only witnesses to prove his demand are without the jurisdiction of this Court, and being willing to refer the said demand to the decisive oath of the defendant prays that a rule may be personally served on the said Francois Chabut, Esq., requiring him to attend this Court in his proper person on Thursday, the 9th of June next, then he to purge himself by his corporal oath from his said demand, failing whereof it shall be admitted and taken *pro confesso*. The Court ordered accordingly. T. S.

Graham and
MacKenzie
vs.
Louis Campeau.

Roe for plaintiffs called James May and duly sworn, declared that the contents of the affidavit, Ex. A. now filed to be the truth and nothing but the truth. Called by plaintiff as evidence J. B'te. Morin of full age and being duly sworn, and declares as follows: Qu'il est commis actuelment employer par le demandeur et que de leur part il fut Dimanche dernier chez defendeur pour lui demander sa raison pour avoir pas acquitté la demande actuel. Pour reponse le defendeur a dit au temoin que ce est bien vrai que lue devoit le vingt trois pons pour une quart de romme qu'il a eut l'été passé, mais peut pas faire cette somme, bien qu'il avoit demander en plusier maison.

J. MORIN.

Execution issued June. Returnable first Court in January next, 1792.

| | |
|----------------|----------|
| Debt | £14 17 6 |
| Costs | 6 8 2 |
| | <hr/> |
| Prov. Cy. | £21 5 8 |

T. S.

Mr. Roe, of counsel for plaintiffs, returned writ of fi. fa. issued in this cause, with full satisfaction indorsed, 3rd Nov., 1791.

C. SMYTH, *Clerk.*

Judgment upon motion of plaintiff for the sum of twenty-three pounds sixteen shillings N.Y. currency with costs. T. S.

Mr. Roe, for plaintiff, upon the non-appearance of opponent admits that the land in execution is the same which in the inventory filed by the opponent, exhibit B, is valued as part of the community of the opponents and Guillaume La Forest, father of the minors in whose behalf the opposition is filed, and thereupon prays judgment on the opposition. Court order that the Sheriff proceed to the sale of the premises subject to the demand of the minor children of Guillaume La Forest and Janvieve Fovelle Bigras to the amount of two thousand, six hundred thirty-five. . . . Upon suggestion by Mr. Roe for plaintiff, that an indefinite number of minor claimants stated in the Sheriff's notification of sale would materially affect the value of the land, and praying that a further day may be given to the plaintiff to ascertain the ages of the children of the said Janvieve Bigras and Guillaume La Forest.

Meldrum and
Park
vs.
Paul Campeau and
wife on the
opposition of
Mad. Campeau.

The Court suspend the above judgment until further prayer of the plaintiff. T. S.

Roe for plaintiff. Default. Mr. Roe for trial next Court day, and that subpoenas may issue. Ordered accordingly. T. S.

Georgé McDougall
vs.
George Lyons.

The plaintiff appeared by his son, Jos. St. Bernard, whose procuration being informal the Court admitted the return and filing of process and gave to the plaintiff until the 9th of June to file his substitution. Defendant entered appearance in person. T. S.

Guillaume St.
Bernard
vs.
Jean Roucoute.

Mr. Roe for plaintiff. Default. Mr. Roe filed the return of the Rule of 14th April last.

Geo. Lyons
vs.
Portier Benac.

Court adjourned to 9th June, 1791.

T. SMITH, *Clerk.*

COURT OF COMMON PLEAS, holden at L'assomption, 9th June, 1791.

Present: William Dummer Powell, Esq., First Judge of said Court.

Province of
Quebec.
District of Hesse.
9 June, 1791.

CAUSES UNDER
TEN POUNDS
STERLING.

Samuel Edge

vs.

John Vert.

Pierre Brannonnier

vs.

dit Bourdon La
Breche.

Judgment, defendant to pay four dollars and a half and costs. T. S.

The defendant appears and for plea says that he was farmer upon the farm claimed, and that by convention with his brother he was to be paid for certain labours done upon the farm agreeable to the account filed and submits he should not be put out of possession until the said account is liquidated. The plaintiff to take communication of the account and for trial in 8 days. T. S.

Pat. McNiff, Esq.,

vs.

Charles Gabriel
and Toussaint
Chene.

For debt. Continued 8 days for proof. T. S.

Nathan Williams

vs.

Pierre Labute.

Mr. Roe for plaintiff. Defendant appeared. Defendant for plea says that it is true, he is indebted a balance on a note of hand a sum of £42 9s. 8d. N. Y. currency for payment of which he suggests the plaintiff gave him term of payment until judgment should be had him depending with Navarre. Mr. Roe replies that such term was given but it's expired. That the judgment mentioned is rendered and in conformity thereto Navarre has tendered to the defendant the debt and costs awarded against him; but that the defendant not being satisfied with the amount of judgment refuses to accept of the said offer or to pay the present demand.

That the defendant admits that the said tender was made to him, and so soon as he receives his money that he will pay the said demand. Judgment for said debt, forty-two pounds, nine shillings and eightpence, equal to twenty-six pounds, eleven shillings sevenpence currency of the Province and costs.

James May

vs.

James Fleet.

Roe for plaintiff. Upon suggestion by plaintiff that the witnesses cannot be had as of this day and that the defendant means to take up his default and go to trial on Thursday next, a delay is given: Ruled that the trial in this cause do come on peremptorily on Thursday next.

Geo. Lyons

vs.

Francois Chabert
Esq.

Mr. Roe for plaintiff filed rule. Defendant not appearing.

Judgment: Having seen the declaration, return and entry of default on the non-appearance of the defendant in this cause as well as the account filed by plaintiff together with the affidavit of James May and the return of service of the rule made on the defendant at the instance of the plaintiff requiring his personal attendance

to purge himself by oath of the demand made by plaintiff and the record of his default this day, it is considered that the plaintiff's declaration be taken as confessed by the defendant, and thereupon judgment is entered against him that he pay to the said Geo. Lyons the sum of twenty-six pounds, ten shillings fourpence currency of N. York equal to sixteen pounds, eleven shillings and fivepence currency of Quebec with costs. T. S.

Execution issued 29th June, 1791, returnable first Court in January, 1792.

| | | | |
|-----------------|-------|----|---|
| Debt | £16 | 11 | 5 |
| Costs | 6 | 11 | 2 |
| | <hr/> | | |
| | £23 | 2 | 7 |
| Execution | 0 | 5 | 0 |

T. S.

Mr. Roe for plaintiff, returned writ of fi. fa. issued in this cause with full satisfaction indorsed.

Mr. Roe for plaintiff. Defendant appeared. Judgment on confession of the debt by defendant agreeable to the terms of the declaration for the sum of seventy-five pounds currency of Quebec, with costs. T. S.

Execution issued 23rd August, 1791. Returnable first Court in March, 1791.

| | | | |
|-----------------|-------|----|---|
| Debt | £75 | 0 | 0 |
| Costs | 9 | 13 | 6 |
| | <hr/> | | |
| Execution | 0 | 5 | 0 |

C. S.

Mr. Roe for plaintiff; defendant not appearing. Cause continued for 8 days (as the declaration and account have been left in the Clerk's office) on motion of Mr. Roe. T. S.

Geo. Lyons
vs.
Portier Benac, Esq.

Mr. Roe for plaintiff filed declaration. Defendant appeared and for plea says that he is not indebted; but the plaintiff replied that he is indebted to him. Filed account, the plaintiff to take communication of the same.

Gabriel Godfroy
vs.
J. B. Couteur.

T. S.

Judgment. Parties present. It is considered that the defendant pay to the plaintiff the sum of fifteen hundred livres with interest from the 30th of October, 1783; but that in case of concurrence with any other judgment or mortgage creditor upon the premises intended to be charged with the said debt and interest by the written

Jos. Thibeault
vs.
J. B. Roucoute.

exhibit bearing date 19th June, 1790, such interest is to be charged on said premises from the date of the fiat, the 19th of May last. T. S.

Guillaume St.
Bernard
vs.
J. Roncourt.

Joseph St. Bernard, attorney by procuration for plaintiff, appeared. The defendant appeared in person. It is considered that the defendant pay to the plaintiff the sum of twelve hundred and sixty-five livres fifteen sols, equal to fifty-two pounds fifteen shillings currency of the Province.

Court adjourned to 16th inst. T. S.

Execution issued 23rd June, 1791. Returnable first Court in February, 1792.

| | |
|-------------|----------|
| Debt | £52 15 0 |
| Costs | 0 0 0 |

T. S.

Province of
Quebec.
District of Hesse.
16th June, 1791.

COURT OF COMMON PLEAS, holden at L'assomption in the said District, 16th June, 1791.

Present: William Dummer Powell, Esquire, first Judge of said Court.

William Forsyth
vs.
F. D. Belcourt.

Default.

Geo. Lyons
vs.
J. B. Russell.

Roe appeared for plaintiff. Default.

Jacob Dicks
vs.
Jno. Cray and
Wife.

For damages. Parties appeared. Defendant pleads not guilty and the issue for tryal next Court day.

Pierre Branconnier
vs.
Bourdon de La
Breche.

Parties appeared. Defendant filed plea. Continued 8 days to give communication thereof to the plaintiff.

Pat. McNiff, Esq.,
vs.
Charles Gabriel
and Toussaint
Chene.

Parties appeared. Plaintiff called A. McCormick and sworn as witness being questioned on the part of the plaintiff what knowledge he has of the voie de fait or trespass declared to have been committed by the defendants in the terms of the plaintiff's declaration, says that about the 14th or 15th of February last he saw Charles Chene, one of the defendants named in the cause, cut down a picket of the garden fence upon the premises occupied by the plaintiff. That the witness thereupon informed; Mr. McNiff came out and enquired of the said defendant what he meant by cutting down his fence, the said defendant replied that he wanted a piece of good oak for a sled bottom and that he would replace the picket upon which Mr. McNiff said that would never do, but suffered him to take the picket away: That about the 25th of March last two of the defendants, Gabriel and Toussaint Chene entered the premises with intent

to carry off some boards which formed the fence around the barn, that Mr. McNiff forbid them to carry them off without leave from him, or he should be under the necessity of chastising him, to which Toussaint Chene replied that the boards were his, not his fathers, and that he would carry them off without the leave of anybody, but did not at that time carry them away, and that the boards are not now there. That about the 1st of June last he saw Charles Chene, one of the defendants, go along the wheat field sweeping the tops of the grain with a long pole, which he said was to destroy the caterpillars. That on the 5th June last he saw Gabriel Chene, one of the defendants, cut and carry off a basket of grass from the head land of the wheat field, which he said was for a young calf, and upon Mr. McNiff enquiring why he did it he replied that he would cut it if he pleased.

Q. by Court. Did you see the three defendants together committing any trespass upon the premises against the consent and will of the plaintiff? Ans. He did not.

ARTHUR McCORMICK.

Called by plaintiff, Michael Shannon as witness and duly sworn. Says, that he is a hired servant to the plaintiff, who about the last of March last going to the River La Tranch directed the witness not to suffer anything to be carried off the premises until his return. That about 8 or 9 days after being at work in the field, Mr. McNiff sent for him to prevent the defendant Gabriel Chene from carrying off some boards which they had heaped together and were then carrying them away. That he prevented them from taking anything away until they first obtained leave of his master. That some of the boards had nails in them; but to what part of the buildings they belong he does not know.

That some time in June, inst., the witness saw Gabriel Chene, one of the defendants, beating the wheat on the premises with a pole and saying at the same time that it was his own wheat.

Q. by plaintiff. If the witness ever saw the three defendants together to plant corn on the premises. Ans. No, but that he saw Charles Chene and wife plant corn in the upper field.

His
Michal X Shannon.
marque.

T. SMITH, *Clerk*.

Defendants called as evidence Pierre Barron, and duly sworn.

Q. by defendant. Ettié vous present quand le demandeur a prie possession de notre maison et nous a jeter d'hors, ettié vous appellé pour temoiner ce que passerai pour lors, et informé la cour. Response, oui, je ettait present quand le demandeur a jeter le defendeur d'hors. Que le temoine il fut avec sa voiture pour charrier les bûtins de defendeur, que Mr. McNiff leur a dit il y a pas bissant de sortir des buttins qu'il rest ici sans aucune payment, et qu'il a offere le cler du grinnier par trois fois a Mr. Chene et en oûtre quand a le gard des animaux qu'il pouvez les laisser la.

Q. by plaintiff. At what time did this happen? Repons. Il peut pas dire exactment les tems mais il y a encore du nige.

Q. by plaintiff. S'il entend l'anglais. Repond Que Non. Comment il s'entend cette histoire, Repond. Que le demandeur a parler a qu'il dissait a legard de buttins en francais, que a legard des animaux il est explique en Anglais avec Gabreil Chene qu'il a interpreter a son Pere.

Pierre Barron X His mark.

T. SMITH, Clerk.

Defendant called as evidence Geo. Lyons and duly sworn, declares, that upon some proposition from Mr. McNiff he, the witness, accompanied Toussaint Chene, one of the defendants and was present when Mr. McNiff gave permission to the defendants to plough and sow such part of the land as he pleased excepting a small piece which he reserved for turnips and potatoes.

Q. by Court. At what time was this? Ans. That it was about two months ago.

Q. by plaintiff. If he recollects the conditions on which the plaintiff permitted them to sow. Ans. None, but he has stated before, but that Toussaint Chene, one of the defendants said he could not then go but he would return the next day and would together go and point out the spot to plant.

En deliberé.

GEO. LYONS.

Parties appeared. Plaintiff filed declaration. Defendant pleads the general issue.

En deliberé.

Pat. McNiff, Esq.,
vs.
Charles Gabriel
and Toussaint
Chene.

Papers made up
& the Court
Exhibits A. B. C.
filed and sum
and return.

Parties appeared. Que le defendant apparû en personne et reconnû de etre en collere il a t  merarrement et malle apropos ten   de propos injuriuse a L'honneur du demandeur qu'il renconnait les avoir pas meritt  e et de sus sa saumette a la Cour.

Andre Decaraux
vs.
Philip Bellangy.

Judgment. Defendant pay costs of suit.

Issued execution 26th August, 1791. Returnable in two months.

| | |
|-------------|--------|
| Debt |  0 0 0 |
| Costs | 0 9 5 |
| | <hr/> |
| |  0 9 5 |

| | |
|---------------|--------|
| Writ |  0 1 0 |
| Bailiff | 0 4 0 |

C. S.

For debt. Continued 8 days.

Andre De Caraux
vs.
Philip Bellangy.

Plaintiff filed declaration. Roe appeared for defendant.

ABOVE TEN
POUNDS
STERLING.
Durand
vs.
Lipps.

Roe for plaintiff. Defendant appeared, and for plea says that he never took an anchor from Mr. May, the plaintiff. Plaintiff called as witness Robert Freeman, and duly sworn.

James May
vs.
James Fleet.

Q. by plaintiff. If he has any knowledge of an anchor being removed from Mr. May's yard to the King's shipyard by a party of seamen under the direction of the defendant, James Fleet, and when. Ans. That he has knowledge from conversation among the seamen that some time in the spring last an anchor was removed from the plaintiff's yard to the King's shipyard, and that George Dunn, a gunner, was one of the party that assisted to remove it.

Q. by the plaintiff. Did you never say to any person or persons that you assisted to remove the anchor. Ans. No, he never did.

His
Robert X Freeman.
mark.

T. SMITH, Clerk.

Plaintiff called as evidence John Miller, and sworn.

Q. by plaintiff. Have you any knowledge and what of any anchor being removed out of J. May's yard to the King's yard, and when? Ans. That some time last spring he assisted to remove an anchor to the King's shipyard from a house yard in Detroit; whether it was Mr. May's yard or not he cannot say, and that such yard was joining on one side to Capt. Ford's, and that Mr. Williams, Mate of the "Felicity" commanded a party of six men, went to the yard and showed them the anchor, and that Mr. Fleet the defendant had no hand in carrying away the anchor, nor was present from the beginning to the end, being employed in another command carrying wood into the yard to make sheaves for blocks.

His
John X Miller.
mark.

T. SMITH, *Clerk*.

Plaintiff called as evidence Geo. Dunn, and duly sworn, says that he was one of a party by order of Mr. Williams, Mate of the "Felicity," that went to remove an anchor from the yard next to Capt. Ford's house to the shipyard and that he was present and saw it removed, and that the defendant, James Fleet, was not present at any part of the time.

George Dunn.
X

Mark of Geo. Dunn.
T. SMITH, *Clerk*.

On motion of plaintiff, this action to stand over en deliberé. T. S.

Geo. Lyons
vs.
Portier Benac, Esq.

Mr. Roe for plaintiff. Defendant not appearing. Plaintiff admitted to swear to his account agreeable to the Rule of Court served on defendant, and filed 26th May last with the return of the service duly executed. Sworn accordingly. Judgment, the defendant to pay the plaintiff agreeable to said account and terms of the declaration the sum of fifteen pounds, eight shillings and twopence, currency and costs. T. S.

Execution issued 2nd July, 1791. Returnable first Court in January, 1792.

| | | | |
|-------------------|-----|----|---|
| Debt | £15 | 8 | 2 |
| Costs taxed | 8 | 12 | 2 |
| | £24 | 0 | 4 |

Cap. ad. issued 4th August, 1791. Returnable in February next. Sub. costs. T. S.

Roe for plaintiff. Default. Plaintiff moved for tryal in 8 days. Ordered accordingly. Court adjourned to 25th inst.

Gabriel Geofroy
vs.
J. B. Couteur.

T. SMITH, *Clerk.*

COURT OF COMMON PLEAS, holden at L'assomption in the said District this 23rd day of June, 1791.

Province of
Quebec.
District of Hesse.
23rd June, 1791.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

Roe for plaintiff filed declaration. Default. The Court met and received the above return, but, being a great holiday Fête de Dieu, adjourned the same to the 30th inst.

Francois Du
Chouquet
vs.
Ronald McDonald.

T. SMITH, *Clerk.*

COURT OF COMMON PLEAS, holden at L'assomption in the said District, 30th June, 1791.

Province of
Quebec.
District of Hesse.
30th June, 1791.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

Settled.

CAUSES UNDER
TEN POUNDS
STERLING.
Wm. Hands
vs.
Bapt. Lacelle.

Dismissed with costs.

J. B'te Beauparlant
vs.
Jos. T. Framblay
dit Lionard.

Sworn Jno. Dodormead, a witness duly subpoenaed to the bargain between the parties. Judgment, the defendant to pay plaintiff the sum of ten pounds eighteen shillings and ninepence Halifax currency, with costs. T. S.

Wm. Forsyth
vs.
Fr. D. Bellcour.

Roe for plaintiff. Default. Continued at instance of plaintiff eight days for proof.

Geo. Lyons
vs.
J. B'te Reossell.

Sworn Ebenezer Loveless, a witness duly subpoenaed and proved the allegations as set forth in the plaintiff's declaration and the defendant's wife acknowledged that she does not know anything of the plaintiff and that she was sorry for what she had said and that she was in a passion at the time and did not know what she said, and acknowledging the plaintiff to be an honest man. In consideration of the plaintiff's relinquishing his claim to the damages the defendants to pay costs. Allowed witness two shillings and sixpence and Ferriage one-third pence.

Jacob Dicks
vs.
Jno. Cray & Wife.

T. S.

Pierre Brannonnier
vs.
Paul Dugas
dit La Breche.

Mr. Roe for plaintiff. Default. Continued to prove the demand in eight days.

Pat. McNiff
vs.
Charles Gabriel
and Toussaint
Chene.

For trespass. Dismissed with costs.

Pat. McNiff
vs.
Charles Gabriel
and Toussaint
Chene.

For debt. Dismissed for want of proof.

Andre De Caroux
vs.
Philip Bellangy.

Roe for plaintiff. Default. Judgment. The defendant to pay the plaintiff thirteen shillings six and a half-pence currency of Quebec, and costs.

Issued execution 26th August. Returnable in two months.

| | |
|-------------|----------|
| Debt | £0 13 6½ |
| Costs | 0 9 5 |
| | <hr/> |
| | £1 2 11½ |

| | |
|---------------|--------|
| Writ | £0 1 0 |
| Bailiff | 0 4 0 |

C. SMITH, *Clerk.*

ABOVE TEN
POUNDS
STERLING.
Pierre Durand
vs.
John Lipps.

Roe for defendant filed exception. Continued the cause for 8 days at the instance of the Court in order to look into the propriety of the defendant's exception.

James May
vs.
James Fleet.

Roe for plaintiff. The defendant not appearing, on motion of plaintiff, the cause is discontinued.

Gabriel Godfray
vs.
J. Bte. Couteur.

Roe for plaintiff. Default. Continued 8 days on motion of plaintiff.

Fr. Duchoquet
vs.
Ranald McDonell.

Roe for plaintiff. Default. Continued 8 days on motion of plaintiff.

Daniel Bliss, Esq.,
Attorney, etc.,
vs.
Wm. Thorn.

Roe for plaintiff filed declaration. Default.

Graham &
McKenzie,
vs.
Louis Campeau,
on the opposition
of Jacques Cam-
peau, of St. Anne,
Yeoman.

That the opponent filed a mortgage bearing date the first day of October, 1790, hypothecating sundry moveables upon the farm of the defendant which the opponent submits not to be subject to the execution of this Court. Ordered by the Court: moveables not being subject of mortgage, Sheriff is ordered to proceed to the sale, that the opponent personally exposes to the Court that the law returned by the Sheriff in the property of the defendant belongs to him and is ready to verify. Continued 8 days to prove the law by the opponent, but the law in

the interval to remain in the hands of the Sheriff. T. S.
Court adjourned to 7th July next.

T. SMITH, *Clerk.*

COURT OF COMMON PLEAS, holden at L'assomption in
the said District on the 7th July, 1791.

Present: The Honourable William Dummer Powell,
Esquire, First Judge of said Court.

Province of
Quebec.
District of Hesse.
7th July, 1791.

Continued for 8 days on motion of plaintiff.

CAUSES UNDER
TEN POUNDS
STERLING.
Geo. Lyons

vs.
J. B'te Russell.

Continued en deliberé.

Pierre Branconier
vs.
Paul Dugas, dt.
La Breche

Judgment for—say two pounds, ten shillings Halifax
and costs. T. S.

Pierre Leveré
dt. Martin,
vs.
Francois Menard,
dt. Montour.

On motion of Mr. Roe, discontinued.

Geo. Leith, sur-
viving partner of
late company of
Leith & Shepherd,
vs.
J. B'te Laselle.

On motion of Mr. Roe, discontinued.

Geo. Sharp, Esq.,
vs.
J. B. Laselle.

Mr. McNiff by procuracy for defendant, and Mr.
Roe for plaintiff, filed declaration.

Pierre Gabriel
and Toussaint
Chene

The defendant for plea say that he is not indebted
in manner and form as set forth in the plaintiff's de-
claration.

vs.
Arthur
McCormick.

The plaintiff replied that he is indebted in manner and
form as set forth, which he is ready to verify. The cause
stands over for trial on the next adjournment upon
motion of plaintiff. T. S.

Roe for plaintiff filed declaration. The defendant ap-
peared. Judgment on confession of the debt, twenty-five
shillings and tenpence Halifax, with interest from 5th
April, 1786.

Wm. Hands
vs.
J. B. Campeau.

£20. 5/10 Halifax currency.

Issued Execution 28th October, 1791. Returnable
first Court day in May, 1792.

| | | | |
|-------------|-------|----|----|
| Debt | £20 | 5 | 10 |
| Costs | 6 | 8 | 2 |
| | <hr/> | | |
| | £26 | 14 | 0 |
| Writ | | 5 | |

C. S.

Pierre Durand
vs.
John Lipps.

Plaintiff appeared and filed an answer to defendant's exception. Roe for defendant. Judgment on exception favors defendant. Defendant agreed, on the plaintiff paying costs up to this period to allow him to amend his declaration. Amended accordingly, and continued to give communication of the papers to defendant. T. S.

Gabriel Godfray
vs.
J. B. Couteur.

Roe for plaintiff. Default. The party who delivered the goods being absent and cannot be had before this Court, the plaintiff moved to have a rule served on the defendant in order he may appear to purge himself upon oath *pro confesso* and ordered accordingly. T. S.

Fr. Duchoquet
vs.
Ran'l McDonnell.

Roe for plaintiff, and defendant appeared. That the default in this cause being at first erroneously entered it is now erased. Mr. Roe moved that he could not go to tryal this day on account of one of his witnesses being absent. The defendant for plea pleads the general issue. The cause for tryal on the first adjournment. T. S.

Daniel Bliss,
Attorney, etc.,
vs.
Wm. Thorn.

Default. This cause continued on motion of plaintiff to next adjournment. T. S.

Graham &
McKenzie
vs.
Louis Campeau,
on the opposition
of Jacques
Campeau.

This opposition is withdrawn by consent of parties and on motion of plaintiffs, the law in question allowed to opponent.

Court adjourned on account of the harvest to the 4th of August next, 1791.

T. SMITH, *Clerk.*

Province of
Quebec.
District of Hesse.
4 August, 1791.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District on the 4th day of August, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, first Judge of said Court.

CAUSES UNDER
TEN POUNDS
STERLING.
George Lyons
vs.
J. B'te Reossell.

Settled and the action withdrawn on motion of plaintiff. T. S.

Pierre
Branconnier
vs.
Paul Dugas,
dit LaBreche.

The defendant having filed his account agreeable to the interlocutory judgment in this cause, the Court consider that this cause be dismissed, as to the further demand for possession which this Court is not competent to award upon the present action.

William Harffy
vs.
Louis Causley.

This cause is dismissed. Parties having settled.

On motion of Mr. Roe, for plaintiff, the last rule in this cause prolonged to fourteen days.

CAUSES ABOVE
TEN POUNDS
STERLING.
Pierre Gabriel and
Toussaint Chene
vs.
Arthur McCormick.

On motion of Mr. Roe, discontinued.

D. Bliss, atty. and
vs.
Wm. Thorn.

The plaintiff having given communication of his account to the defendant only three days ago, the Court order peremptorily that the defendant file his plea in eight days.

Pierre Durand
vs.
John Lipps.

Mr. Roe, for plaintiff, filed rule and the return of service on the defendant to appear this day. Court order that his appearance be extended eight days on account of the harvest.

Gabriel Godfray
vs.
J. B. Couteur.

Roe, for plaintiff, called as evidence Robt. Abbott, who was duly sworn, says that about two years since his father, James Abbott, sold to the plaintiff a bay mare which he bought from Francois Valcour, of St. Anne, and that the defendant, in the month of May, last, being at the Glaize, told the witness that the mare which the witness' father had exchanged with the plaintiff for an ox, he, the defendant, had taken from the Indians as his property.

Fr. Du Chouquet
vs.
Randall McDonell.

ROBERT ABBOTT.

Plaintiff called as evidence Louis Causley dit Benoit of full age and duly sworn, and says: "Que environ deux ans it est au service du demandeur, pendant quelle tems it a soignier la jimmant que le demandeur, M. Duchoquette avoit achet   de M. Abbott, qu'il connoit bien pour avoir demeurer chez Mr. Abbott et y avoir soignier la meme jimmant. Que l'automne pass   le sauvage ont ce lev   la dite jimmat qu'ils sont vend   apres a une sauvages a l'employ de demandeur de la quelle sauvages la defendeur McDonell a prie la dite jimmant de force comme a lui appartenant, comme il a declar   au temoin qu'il lui porta ce printems du commencement de Mai une billet de M. DuChaquet au sujet de la jimmat. Que dans le meme tems avant de arriver a la glaise il a ve   la meme jimmat dans la possession de un Sauvage qui declara au temoin qu'il avait rec   de Mr. McDonell avec un barril du romme pour un autre cheville.

C. H. filed
Subpoena
Account
Letter.

"Que le meme soir le defendeur avec Mr. Ironside son ven   trouver le temoin lui demander pour quoi il a voull   oter la jimmat au sauvage, ce que le temoin ny a disant qu'il a fait que l'arrettet pour examiner sy ce ett   la jimmat de son bourgeois, et qu'a le demande du defendeur

sy connoissai la jimmat pour avoir léver et s'il en voullu faire serment, il dit que non, mai qu'il produrai un homme qu'il avoit elever et qu'il soutienteroit par serment cette ettoit la meme jimmat il avait vendû a Mr. Abbott. Que le temoin declara que la dite jimmat valloit environ quinze pounds, et pour louez un chevalle dans la pais sauvage il coutait ordinairement trois piastre pour trois ou quatre jour de marche, et que le demandeur lui a donner quatre piastre pour la voyage qu'il fut chez Mr. McDonell ce printems, et les vivres que consistat en quinze ou vingt livres de farrine, non comprie un chevalle qu'il lui a fournir pour la voyage."

Allowed subpoena two shillings sixpence, Halifax, for his attendance.

His
LOUIS X CAUSLEY DT. BENOIT.
sa Marque apres.

Lecteur fait. T. SMITH, *Clk.*

Geo. Lyons
vs.
Etienne Robidaux.

Roe, attorney for plaintiff, filed declaration. Defendant personally appeared. Judgment on confession of the note for the balance of the same twenty-eight pounds, Halifax currency. T. S.

Geo. Lyons
vs.
Joseph L'Enfant.

Roe, attorney for plaintiff, filed declaration. Default. T. S.

John Askin
vs.
Etienne Latour,
dt. Bellar on the
opposition of
D. McKillip.

Smyth, for plaintiff. Mr. Roe, for opponent. (This action continued from page 1.) The opponent declares he is not ready for tryal and filed affidavit to that effect. That his papers respecting this cause are lost and that he is now under the necessity of going to the River Raisin to get copies of them, but that he will be ready to try the issue in eight days. Ordered peremptorily by the Court. T. S.

George Lyons
vs.
Polier Benac.
Esq.

Mr. Roe, for plaintiff, informs the Court that on the 2nd day of July, last, a writ of f.i.f.a. was issued from this Court at the suit of the plaintiff against the goods and chattles, lands and tenements of the defendant, addressed to the Sheriff of this District, who, in consequence granted his warrant to Jas. Elam, one of his deputies, who, in execution thereof, on the first day of August inst., was violently assaulted and drove off the defendant's premises by the defendant himself in person, as appears by the affidavit of the sd. Jas. Elam, filed in Court marked (A),

and the return of the Sheriff on the said writ; wherefore prays the Court to award a writ of *capias ad satisfaciendum* to issue against the defendant.

Court order that a *capias* do issue accordingly. T. S.

Court adjourned to 11 inst. T. SMITH, *Clk.*

COURT OF COMMON PLEAS holden at L'Assomption in the said District, on the eleventh day of August, 1791, pursuant to adjournment.

Province of
Quebec.
District of Hesse.
11 August, 1791.

Present: The Honourable William Dummer Powell, Esqr., first Judge of the said Court.

The Commission appointing Charles Smyth Clerk of the Court was read and the state oaths required by law administered, as also the oath of office.

Plaintiff appeared in person. Mr. Roe, of counsel for defendant, appeared and filed plea marked C. Continued for eight days.

Pierre Durand
vs.
John Lips.

Mr. Roe, of counsel for plaintiff, appeared. Defendant in person.

Gabriel Godefroy
vs.
J. B'te Couteur.

It is ordered, on motion of Mr. Roe, that the rule for administering the *Serment décisoire* to the defendant may be quashed, and that a consent rule be entered whereby Francis Chabert, Esqr., in behalf of the defendant, and Mr. James McIntosh, on the part of the plaintiff, liquidate the respective accounts of the parties and report the balance due in fourteen days, and in case of difference the report to be made on the umpirage of James May, of Detroit, merchant, in three weeks from this date.

Mr. Roe, of counsel for plaintiff, appearing, prays the judgment of the Court, and defendant's attorney by pro-curation being present, Court considers that the plaintiff do recover from defendant the sum of sixteen pounds, New York currency, price of the horse claimed by plaintiff, together with two pounds for the expenses of claim, making together eleven pounds, five shillings, Province currency, unless within fourteen days he returns the horse to the plaintiff in good condition, and shall pay for the detention thereof one shilling and threepence, Province currency, per day from the date of the writ in this Cause until the horse be delivered—and costs of suits. And the Court, for reason of such judgment, says that "there is not sufficient evidence of the malamens in defendant to charge him with exemplary damages. Therefore he is adjudged as on a

Francois
Duchouquet
vs.
R. McDonnel.

voyé de fait to restore the object of his trespass and reasonable damage, or at his option to pay the price and expense of claim."

George Lyons
vs.
L'Enfant.

On motion of Mr. Roe, attorney for plaintiff, continued for fourteen days.

John Askin
vs.
Etienne Latour,
dit Bellar, on the
opposition of
Daniel McKillip.

Mr. Roe, of counsel for the opponent, appeared and filed exhibit marked with the letter Y.

Ordered that the plaintiff do take communication and answer in eight days.

Court adjourned to 18th inst. C. H. SMYTH, *Clerk*.

WM. D. POWELL, *J.C.P.*

Province of
Quebec.
District of Hesse.
18 August, 1791.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on the 18th day of August, 1791, pursuant to adjournment.

Present: The Honourable William Dummer Powell, Esquire, first Judge of the said Court.

Meldrum and Park
vs.
Edward Hazel.

Mr. Roe, of counsel for plaintiff, filed declaration. Defendant in this cause appeared in person, for plea says that he is not indebted in manner and form as set forth in plaintiff's declaration, and prays judgment of Court; and plaintiff for reply saith he is indebted in manner and form and does so likewise. On motion of Mr. Roe this cause is set down for trial on next court day.

Meldrum and Park
vs.
Thos. Smith, Esqr.

Mr. Roe, of counsel for plaintiff, filed declaration. The defendant appears in person and prays the usual time to plead. Ordered; and cause continued to next adjournment.

Pierre, Gabriel,
and Toussaint
Chene
vs.
Arthur McCormick.

Mr. Roe, of counsel for plaintiff, moves the Court that the rule in the cause for trial extended to this day, be further continued for eight days. Ordered accordingly.

Durand
vs.
Lips.

Mr. Durand appeared in person. Mr. Roe, of counsel for defendant. The plaintiff for replication to the defendant's plea or answer, saith, that for anything in the said plea contained, his suit ought not to be dismissed for his said damages have not been liquidated or compensated by any judgment of this Court, as by the said plea is untruly alleged of which the plaintiff prays the Court will enquire and condemn the defendant as before by his said declaration is prayed.

Continued for eight days.

En delibere. Continued.

John Askin
vs.
Latour dit Bellar,
on the opposition
of D. McKillip.

Groesbeck
vs.
Visgar.

On motion of Mr. Roe for plaintiff, ordered that the rule of the 14th of April, last, be made peremptory and that the defendant do file his plea in eight days.

Court adjourned to 25th inst. CH. SMYTH, *Clerk*.
W. D. P.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on the 25th day of August, 1791, pursuant to adjournment.

Province of
Quebec.
District of Hesse.
25 August, 1791.

Present: The Honourable William Dummer Powell, Esquire, first Judge of the said Court.

The parties being called appearing, Mr. Roe produced as witness to prove his demand as contained in his declaration. Alexander McKenzie, of full age and not interested, who being sworn and questioned by Mr. Roe, of counsel for plaintiff, says: That from the 30th of January to the 12th of April, 1785, inclusive, he was clerk to Messrs. M. Park, plaintiff in this cause, and that the entries in their books of account which he has compared with the accounts exhibited were made by him and agree respectively with the said exhibit, the several articles of which were delivered to the defendant as to his order either by the witness or in his presence. ALEXANDER MCKENZIE.

Meldrum
and Park
vs.
Edward Hazel,

Issued fee for 23rd August, 1792. Ret. 1st Court, June, 1793.

| | | | |
|-----------------|-------|----|----|
| Debt | £17 | 7 | 10 |
| Costs | 6 | 11 | 8 |
| | <hr/> | | |
| | £23 | 19 | 6 |

Writ 5, interest on £17 7s. 10d. from 11th day of August, 1791. C. SMYTH, *Clerk*.

On motion of Mr. Roe Court considered that judgment be recorded against the defendant agreeable to the terms of his declaration, the sum of seventeen pounds, seven shillings tenpence, Halifax currency, with costs.

The plaintiffs appeared by their attorney Mr. Roe and the defendant in his proper person, and filed his plea marked B.

Meldrum and
Park,
vs.
Thos. Smith.

Continued for eight days for plaintiff's replication.

Pierre, Gabriel,
and Toussaint
Chene
vs.
Mr. McCormick.

Continued on motion of Mr. Roe for eight days.

Durand
vs.
Lips.

The plaintiff appeared in person and the defendant by his attorney, Mr. Roe.

Ordered by the Court that the plaintiff be permitted to make proof of the several articles of his account by witness, and to that end that he do in eight days file the names of the said witness with the respective interrogatorus to be answered by them, and that subpoenas be accorded him for the appearance of his said witness in fifteen days.

Groesbeck
vs.
Visgar.

Mr. Roe, of counsel for plaintiff, filed rule marked F, and on representation of defendant that he was served with said rule too late to draw up the account and statements necessary to form his plea. It is ordered by the Court, that he be recorded eight days for that purpose to file his plea.

Lyons, plaintiff,
vs.
L. Enfant.

On motion of Mr. Roe, of counsel for plaintiff, it is ordered that this cause do stand over for fourteen days.

John Askin
vs.
Latour dit Bellar,
on opposition of
Daniel McKillip.

Continued by the Court en deliberé.

CAUSES UNDER
TEN POUNDS
STERLING.
Harffy
vs.
Jos. Barron.

Parties appeared. Continued eight days for proof of plaintiff's demand.

The same
vs.
Hannah Clark.

Parties not appearing, dismissed.

The same
vs.
Pardoe.

No return.

Court adjourned to 1st September, 1791.

W. D. P.

CHAS. SMYTH, *Clerk.*

Province of
Quebec.
District of Hesse.
1 September, 1791.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on the 1st day of September, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, first Judge of the said Court.

Meldrum and
Park
vs.
Thos. Smith.

Mr. Roe appeared and filed replication marked C. Defendant appeared in person—continued eight days.

P. G. and T. Chene
vs.
Ar. McCormick.

Mr. Roe, of counsel for plaintiff, moves the Court that this cause be brought down for trial on Thursday next.

Ordered by the Court accordingly, and that a copy of this rule be served on defendant or his agent.

Plaintiff filed declaration. Mr. Roe appeared for defendant. Continued eight days.

Edward Hazel
vs.
Meldrum and
Park.

The plaintiff appeared in person and filed exhibit D. Mr. Roe, of counsel for defendant, likewise appeared. Continued for eight days.

Durand
vs.
Lips.

Mr. Roe for plaintiff. The defendant appears in person, and for answer to the plaintiff's declaration says that he is not in his said quality indebted as set forth therein, that he finds in the books of accounts of his intestate certain entries respecting transactions with the plaintiff which are extracted and contained in the exhibits now filed marked G, H, J, E, K, and having no personal interest in the said estate he says the same before the Court, and prays to be advised in the premises. Mr. Roe, for plaintiff, appeared and filed his replication to said plea marked L. Continued eight days. Discontinued on motion of plaintiff.

Groesbeck
vs.
Visgar.

It is considered by the Court that the Sheriff do proceed to the sale of the premises seized without regard to the opposition. And in conformity to the ordinance, states as the reason and ground of its judgment, that as the law stands the judgment of the Court is to be satisfied out of the lands and tenements of the debtor, failing his goods and chattels. The judgment, if for more than ten pounds sterling, hypothecates all the real property of the debtor, and only a prior hypothecation can be admitted against it. If such is pretended and is anterior to that which may have grounded the judgment, the validity of it only can be inquired into on the opposition. The plaintiff's demand is on a bond and special mortgage of two acres stated to be in the possession of the defendant, and surveyed as his property in September, 1788. The bond is before an officer to whose accounts authenticity is given by a special ordinance of April, 1789. There is all appearance of good faith. To the bond is annexed the receipt and acquittance of the former supposed proprietor. Against such an act the opponent files two unauthentic documents, the admission of which cannot cure their insufficiency without the intervention of the Legislature, so that the opponent's claim must rest on that equitable principle of the Law of France, which in favour of the proprietor or Bailleur du fonds, creates a fictitious mortgage, hypothèque tacite without the intention of deeds or judgments, but this equitable fiction is not intended to do more for the owner than he

John Askin
vs.
Etienne Latour,
dit Bellar,
on the opposition
of Daniel McKillip.

could do himself, by taking the legal steps to secure the payment of his bond. Therefore, it follows, he must prove his title. No fiction can supply that, and when the documents filed show on his part that he had none, none that the King's Courts can acknowledge.

P. G. and
Toussaint Chene
vs.
Pat. McNiff.

Mr. Roe, of counsel for plaintiff, appears, files declaration and admits the essoin of defendant filed and marked A in lieu of application. Continued eight days.

Geo. McDougall
vs.
Geo. Lyons.

The Sheriff having returned writ of fi. fa. in this cause, with the opposition of Geo. Leith annexed, to the sale of certain moveable property seized as belong to defendant.

The said Geo. Leith enters his appearance by Geo. Ironside to support the same filed paper marked A.

Mr. Roe, of counsel for plaintiff, admits the said appearance and paper filed and prays the judgment of the Court. By the Court it is considered that the Sheriff do proceed to the sale of the effects seized without regard to the said opposition, and in compliance with the ordinance states as cause and ground of its judgment that by law moveable property cannot be subject to hypothecation, and that the appostella to the opposition show that there was no sale, but a pretended mortgage of the moveable goods which can operate no legal effect.

UNDER TEN
POUNDS
STERLING.
Harffy
vs.
Barron.

Parties not appearing. Cause dismissed.

Wm. Searl
vs.
Ben. Marsack.

The parties appeared; continued eight days.

Our Sovereign
Lord the King,
on information of
Wm. Harthorn
vs.
Wm. Scott.

The parties appeared; continued eight days.

The same vs.
Jno. Welch.

The parties appeared; continued eight days.

The same vs.
Mat. Dalson.

The parties appeared; continued eight days.

The same vs.
Thos. Smith.

The parties appeared; continued eight days.

The same vs.
Wm. Hands.

The parties appeared; continued eight days.

The same vs.
John Wheaton.

The parties appeared; continued eight days.

The same vs.
Presque Cotté.

The parties appeared; continued eight days.

The same vs.
Fran. Gardin.

The parties appeared; continued eight days.

The parties appeared; continued eight days.

The King, on information of
James May,
vs.
Jacques Baby.

The parties appeared; continued eight days.

The same vs.
The same.

The parties appeared; continued eight days.

The same vs.
Geo. McDougall.

The parties appeared; continued eight days.

The same vs.
Fran. Frecot.

Mr. Montigny presents to the Court in behalf of Polier Benac, Esq., a petition marked A and a paper purporting to be an affidavit of the said Polier Benac, taken before Geo. Sharp, Esq., marked B.

The above exhibit filed by the Court.

Court adjourned to 8th September inst., (1791).

CHARLES SMYTH, *Clerk.*

WM. D. POWELL, *J.C.P.*

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on the 8th day of September, 1791, pursuant to adjournment.

Province of
Quebec.
District of Hesse.
8 Sept., 1791.

Present: The Honourable William Dummer Powell, Esquire, first Judge of said Court.

Mr. Roe, for plaintiff. Defendant appeared in person.

Meldrum and
Park
vs.
Thos. Smith.

On motion of plaintiff's attorney it is ordered that this cause be set down for trial on the 29th day of September inst.

Issued subpoena to defendant 24th September. C. S.

Mr. Roe filed rule for trial of this day on suggestion of defendant filed and marked D that he cannot, from illness, attend the trial of this cause on this day. It is ordered by the Court that it do stand over for trial in fourteen days.

Pierre, Gabriel,
and Toussaint
Chene
vs.
Arthur McCormick.

The parties appeared. The defendant filed paper marked with letter E, and moved the Court that the prayer of the rule in this cause of the 25th August be extended, and that he gave leave to file his interrogatories in eight days, and that this cause be set down for trial on the 22nd inst. Ordered accordingly.

Durand
vs.
Lips.

Groesbeck
vs.
Visgar.

On motion of Mr. Roe, it is ordered that the merits of this cause be tried in fourteen days. Issued subpoena for plaintiff 16th September, 1791. C. S.

Lyons
vs.
L'Enfant.

Continued on motion of Mr. Roe for one month.

Hazel
vs.
Meldrum and
Park.

Mr. Roe filed plea marked B. The defendant appears in person, and for replication to the defendant's plea saith they are indebted in manner and form as set forth in his said declaration, whereof he prays the judgment of the Court.

It is ordered by the Court, on motion of plaintiff, that this cause be set down for trial in fourteen days.

Issued subpoenas 9th September for Luke Killan, Jas. Benjamin, Judith Ramsay, and Antoine Beauforce.

Pierre, Gabriel,
and Toussaint
Chene
vs.
Pat. McNiff.

Defendant files plea to plaintiff's declaration marked B. Mr. Roe appears for plaintiff.
Cause continued to next adjournment.

UNDER TEN
POUNDS.
Wm. Searl
vs.
Marsack.

Dismissed.

The King, on
information of
Wm. Harthorn
vs.
Wm. Scott.

Judgment, that the defendant be condemned to pay the penalty of five shillings as demanded.

This is an action on a new penal statute, and by the appearance in Court must have engaged much attention. Although by the ordinance the jurisdiction given to this Court is summary and without appeal, yet being the first determination here on the construction of the ordinance the Court assigns the grounds of its judgment that the public may at least have the benefit of authentic representation to the Legislative authority if judged requisite. By the ordinance of 1791 magistrates in towns are empowered, at the request of the inhabitants, to make regulations for the police, which being published shall have force of law for six months; the lower penalties to be recovered by plaint before one Judge of the Common Pleas as in causes under £10 sterling without appeal. The objection by the defendant is that his cow was not wandering in the street, but in a lane, so not within the regulation. Penal statutes are to be construed strictly but not absurdly. Every public thoroughfare in a town is a street, the King's highway. This plea admits everything else, but others respecting the legality of the publication of the regulations, it is requisite that the Court should opine on that objec-

tion in their judgment in this case, as that would be fatal; the Court has examined the ordinance and the testimony. The ordinance requires publication simply without directing the mode as in former ordinance, therefore, the Court is of opinion, that the affixing the regulations as proved at the usual place, and crying them at the church door at the issue of Grand Mass on a Sunday is sufficient evidence of notoriety to take away the plea of ignorance. Few laws are so well promulgated. The declaration demand costs, but none can be given, as the conviction is summary and the ordinance gives costs only on suit for fines exceeding forty shillings.

Judgment that the defendant be condemned to pay the penalty of five shillings.

The same vs.
Jno. Welch.

Judgment as above.

The same vs.
Math. Dalson.

Continued by the Court en deliberé.

The same vs.
Wm. Hands.

Continued by the Court en deliberé.

The same vs.
Jno. Wheaton.

Continued by the Court en deliberé.

The same vs.
Presque Cotté.

Continued by the Court en deliberé.

The same vs.
Fran. Guardine.

Continued by the Court en deliberé.

The same vs.
Thos. Smith.

Judgment that the plaintiff do recover the penalty of twenty shillings as demanded.

The King, on the
information of
James May
vs.
Jacques Baby.

Judgment dismissed, the defendant not being occupier of the house although proprietor.

The same vs.
The same.

Judgment that the plaintiff do recover the penalty of five shillings as demanded.

The same vs.
George McDougall.

Judgment that the plaintiff do recover the penalty of five shillings as demanded.

The same vs.
Fran. Frerot.

Parties appeared, filed sum. Continued fourteen days for proof.

Jno. Baptiste
Frederic
vs.
Louis Vessineau.

Continued to next adjournment.

Bellecour
vs.
Monforton.

The sheriff filed writ of fi. fa. issued in this cause with the opposition of Andre Decaroux to the sale of a boat seized by virtue of the said writ, and the said opponent ap-

Geo. McDougall
vs.
Geo. Lyons, on
opposition of
Andre Decaroux.

peared and prayed time to prove the allegations of his said opposition. It is ordered by the Court that the opponent do prove the same in fourteen days.

Mr. Roe for plaintiff.

Issued subpoena to opponent. Returnable 22 inst. 20th September, 1791. C. S.

Court adjourned to 22nd September, 1791.

W. D. POWELL, J. C. P.

Province of
Quebec.
District of Hesse.
22 Sept., 1791.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on Thursday, the 22nd day of September, 1791, according to adjournment.

Pierre, Gabriel,
and Toussaint
Chene
vs.
Arthur
McCormick.

Continued by Mr. Roe in the rule for trial unto next adjournment.

Edward Hazel
vs.
Meldrum and
Park.

Plaintiff in person. Mr. Roe for defendant. Plaintiff called as witness in this cause Luke Kellin, of full age and not interested, who was sworn to declare the truth.

Ques. by plaintiff: Were you ever employed, and when, by Meldrum and Park, or Mr. Park, to go to the plaintiff at the mouth of the river for one hundred cord of wood and a vessel and her rigging?

Ans.: That he recollects in the spring of the year, about six years past, he was employed by Mr. Heward as a seaman at sixpence a day to bring up a vessel from before the plaintiff's door; that when she arrived at Detroit he applied for his payment and was referred by Mr. Heward to Messrs. Meldrum and Park, that Mr. Park told him Mr. Heward's engagement was nothing to them, but that they would pay him by the month and not by the day, and sent him back again in the vessel with the master, one McKay, and another seaman, with Mr. Heward, to take in cord wood from the plaintiff's. That he remembers the quantity from the circumstance of Mr. Hazel's being obliged to borrow eight cords to make up one hundred cords.

Ques. by plaintiff: Was the vessel and rigging in good order when you received them, and where did you receive the rigging?

Ans.: That the vessel, to appearance, was in good condition, and that he received the rigging, which was likewise in good condition, out of the plaintiff's house.

Ques. by plaintiff: Where and to whom was the wood delivered?

Ans.: That a part of it was landed in three tiers upon the bank before Mr. Park's house; that part of the rest, by order of Mr. Meldrum, was landed before Mr. McComb's, and the remainder above Mr. McKee's.

Witness, C. S.

LUKE KILLAN

The plaintiff called as witness James Benjamin, and duly sworn.

Ques. by plaintiff: Have you any knowledge that Mr. Park at any time and when, came down to the plaintiff's house to bargain for fire wood, and to have his vessel taken care of, and what is your knowledge of the premises?

Ans.: That he remembers in the Fall, about six years ago, Mr. Park came down to the plaintiff's house, and witness heard them talking about firewood, but what bargain they made, if any, he cannot say, except that Mr. Hazel came to the witness to borrow a bottle of rum to give to Mr. Park's people upon closing a bargain, as he said, for one hundred cords of wood, and that in the Spring of the year the plaintiff called the witness at two different times from his work in the field to assist in clearing the ice from Mr. Park's vessel, and that the same Spring the witness lent to the plaintiff eight cords of wood to make up, as the plaintiff said, the one hundred cords he was to deliver to Mr. Park, and that Mr. McKay, master of the vessel, was present and measured the eight cords as for that purpose.

His

Witness, C. S.

JAMES X BENJAMIN.
mark.

Plaintiff called as witness Judith Ramsay, who was duly sworn.

Ques. by plaintiff: Have you any knowledge, that at any time and when, Mr. Park contracted with the plaintiff for a quantity of firewood, and also to take care of a vessel that was froze in the ice before the plaintiff's house, and what knowledge have you?

Ans.: That about six years ago last Fall, she was at plaintiff's house when Mr. Park came down to bargain for some firewood. What the bargain was she cannot say, but that the plaintiff employed two hired men all the winter to cut wood, that the witness cooked for them, and then understood that one hundred cords was to be delivered to Mr. Park. That she saw Mr. Park go with the plaintiff to the garret of his house to choose a place to put the rigging

of the vessel in during the winter, and that during the winter the plaintiff took care of the said vessel.

Witness, C. S.

Her
JUDITH X RAMSAY.
mark.

Plaintiff filed exhibit C, which was admitted by defendant's attorney.

Mr. Roe, for defendant, filed exceptions marked E. and Ex. E.

The plaintiff admits that vessel belongs to Messrs. Meldrum and Park, commanded by Mr. McKay, took no other quantity of wood from the plaintiff in the spring of 1785 than the hundred cords referred to in the foregoing testimony.

Mr. Roe called as evidence in defence, Hugh Heward, of full age and not interested, who was duly sworn to declare the truth.

Ques. by defendant.: Did you or the firm of Heward and McCaslan, at any time, and when, receive from the plaintiff, and what quantity of cordwood; in whose vessel and by whom commanded?

Ans.: That Heward and McCaslan did receive from the plaintiff, between the months of April and June, 1785, seventy-four cords of firewood, which was conveyed in Meldrum and Park's vessel, "The Friends," commanded by Norman McKay, and that the same was delivered below Mr. McComb's house, the whole agreeable to the exhibit E filed in court.

Ques. by the Court: Did Heward and McCaslan contract with the plaintiff, and when, for the said wood?

Ans.: That they did contract with the plaintiff some time in the winter of 1784-85 for a quantity of wood specified in exhibit C filed in court.

Ques. by the Court: Do you know if Messrs. Meldrum and Park undertook to pay to the plaintiff the price of any part of the said wood?

Ans.: I do not know of any other quantity of wood.

Ques. by the Court: To whom did Heward and McCaslan pay freight for the said seventy-four cords of wood?

Ans.: That Heward and McCaslan did not pay freight nor had any settlements of accounts until after their affairs were put into the hands of trustees.

HUGH HEWARD.

Issued subpoena for Benj. Knap and Wm. Lee. C. S.

On motion of plaintiff cause continued to next adjournment for further proof that the wood credited to him by Heward and McCaslan was delivered in the fall of the year 1784.

Plaintiff in person, Mr. Roe for defendant.

Durand
vs.
Lips.

Upon representation by plaintiff that three of his witnesses are sick and cannot attend, it is ordered on consent of Mr. Roe, that those who do attend shall be heard without prejudice to the plaintiff's right of examining the other witnesses. Plaintiff filed interrogatories C and called upon Joseph Pouget, who was duly sworn to the said interrogatories.

Ans. to first interrogatory: Repond que oui.

Ans. to second interrogatory: Repond qu'il a connaissance que Mr. Durand a fait cette demande.

Ans. to third interrogatory: Repond que oui.

Ans. to fourth interrogatory: Repond que oui.

Ans. to fifth interrogatory: Repond qu'il a connaissance que Mr. Urquhart, cinquieme nommé par la Cour à pris les dires des quatres arbitres et comme ils ne trouvait pas d'accord les emportent chez lui promettant d'en faire une rapport a la Cour.

JOSEPH POUGET.

Plaintiff called upon Mr. Thos. Smith, who was duly sworn to answer to certain interrogatories filed marked G.

Ans. to first interrogatory: That he has no knowledge that the defendant returned the land in question, but recollects that the defendant told him that he was going to the Petites Ecores, that he would or could not live upon the plaintiff's land, the plaintiff not having fulfilled his engagement, and that as to the ten baskets of wheat, the plaintiff did offer them to defendant who refused sowing because the land was not fenced, and that this happened about a month before Lips instituted his action against the present plaintiff.

Continued on motion of plaintiff to next adjournment.

T. SMITH.

Mr. Roe for plaintiff. Defendant in person. Mr. Roe filed Exhibit M. Mr. Roe called upon John Burrel as evidence in this cause, who was duly sworn to declare the truth.

Win. Groesbeck
vs.
Jacob Visgar.

Ques. by plaintiff: Is the Exhibit M, now shown you, of your handwriting, and from whence were the contents extracted?

Ans.: It is of my handwriting extracted from the books of account of Mr. Groesbeck, the plaintiff.

Ques. by the plaintiff: Are all the items in the said exhibit contained in the said books of account, and do they correspond truly in the several extensions of dates and sums?

Ans.: Yes, they are all truly extracted from the plaintiff's day book, except certain items against which no name is inserted in the margin, which were extracted from the ledger from entries in the handwriting of Edward Crofton.

Ques. by the plaintiff: Do you know William Groesbeck, Jacob Harsen, Garret Teller, Edward Crofton, John Visgar, Garret Graverat, and Thos. Duggan, and have you seen them write respectively, and are the items, in the said exhibit set against the names of those persons severally entered in the books of account in the proper writing of the said persons respectively?

Ans.: That he knows them all and has seen them write, and that the items in the said exhibit written against their respective names are in the proper handwriting of the said persons in the said books of account, respectively.

Ques. by plaintiff: Are the several items in the said exhibit placed against your name entered by you in the said books and were the articles respectively by you delivered to the said Garret Teller, or to his son?

Ans.: That the major part of the said items were not by him delivered, but charged by order of Wm. Groesbeck or delivered by himself.

Ques. by the Court: Were you at any time, and when, clerk to the plaintiff?

Ans.: I am now, and have been at different periods since the year 1786, clerk to the plaintiff.

Ques. by the Court: Were you in the habit of making entries in the plaintiff's books against other persons, without seeing the goods delivered?

Ans.: Yes.

Ques. by the Court: Do you know, if any, and which of the persons whose names are inserted in the margin of the said exhibit, at present within the jurisdiction of this Court?

Ans.: John Visgar, Thomas Duggan and Jacob Harsen are within the jurisdiction of this Court, but Garret Graverat is deceased, and Crofton has been about two years absent from the District.

Ques. by plaintiff: Is the subscription to the several exhibits from Nos. 1 to 6, inclusive, filed by the plaintiff, and now shown to you, of the proper handwriting of the deceased Garret Teller?

Ans.: Yes.

Ques. by plaintiff: Is the exhibit now shown to you filed and marked No. 69 in the proper handwriting of Ch. Gerardine, and was the contents thereof paid by you to him?

Ans. That Mr. Gerardine wrote the same in his presence, and that he paid the contents by order of the plaintiff.

Ques. by plaintiff: Are you acquainted with handwriting of Wm. Park, one of the firm of Meldrum and Park, and is the signature to the exhibit now shown to you filed and marked No. 70 in the handwriting of the said Wm. Park?

Ans.: He is acquainted with the handwriting of Mr. Park from having seen him write, and that he believes the said signature is in his handwriting.

JNO. BURREL.

Plaintiff called as witness in this Court Hugh Heward, of full age not interested, who was duly sworn to declare the truth.

Ques. by plaintiff: Are the Exhibits, Nos. 67 and 68, filed in court, and now shown to you, in the handwriting of John McCaslan, your late partner, and were the respective sums of £136 7s. 1d. and £9 12s., received by the firm of Heward and McCaslan from the plaintiff on account of defendant and wherefore?

Ans.: That the said exhibits are in the handwriting of his late partner, and that the said sums were received to the use of Heward and McCaslan from the plaintiff at the request of Garret Teller.

Ques. by plaintiff: Was the plaintiff in the habit of equipping the said Garret Teller at the period the said sums were received, and if so, was it not then customary for the equipper to satisfy the debts of the equipped without any written order?

Ans.: I believe he was in the habit of equipping the said G. Teller, and it was then the general custom to pay the debts of the equipped by verbal order.

HUGH HEWARD.

Plaintiff called as witness Jacob Harsen, who was duly sworn to declare the truth.

Ques. by plaintiff: Were the items in the Exhibit M, now shown to you and placed against your name in the margin, severally by you entered in the plaintiff's books of account, and what knowledge have you of the delivery of the said articles to the said Garret Teller or to his use?

Ans.: That the several entries were by him made in the plaintiff's books of account, and that he saw the articles delivered, excepting those of 3rd November and 21st of December, 1784, and three items of June the 3rd, 1785, and likewise an item of 16th September, 1784, for cash which he knows was paid by plaintiff although he did not see it paid.

Ques. by plaintiff: Have you any knowledge of the sale of a tract of land situated at the River a la Tranche by the plaintiff to G. Teller, and what?

Ans.: That he has not other knowledge of such sale, except from hearing Mr. Teller say he had bought the plaintiff's share of land at the River a la Tranche for five hundred pounds, and that the new suit of clothes he then had on were given him by plaintiff to bind the bargain.

The witness being unable to write from an illness in his right arm has made his mark.

C. S.

His
-JACOB X HARSEN.
mark.

Plaintiff called as evidence Thomas McCrae, who was duly sworn to declare the truth.

Ques. by plaintiff: Did you, on the 4th of August, 1783, receive from the plaintiff any, and what sum of money, on account of Garret Teller, and by whose order did you receive the sum?

Ans.: That sometime in the year 1783 he presented his account to Garret Teller, amounting to the sum of £52 14s. 2d., New York currency. That afterwards the plaintiff desired him to charge the said amount to him, which he did and rendered the same on the 4th of August, 1783.

Ques. by plaintiff: Have you any, and what knowledge respecting the sale of a tract of land at the River a la Trenche by the plaintiff to the said Garret Teller, and at what period?

Ans.: He has not, but that he heard the plaintiff and the deceased Garret Teller conversing about an exchange of Teller's share of the land at Groce Point and the River Sin Clair for the plaintiff's share of land on the River a la Trenche, and that he afterwards heard John McIntire, their servant, complain that Teller had made a bad bargain in exchanging good land for bad.

THOS. MCCRAE.

Plaintiff called Jean Baptiste Petré and sworn.

Ques. by plaintiff: Did you at any time, and when, work at Teller's house as a joiner?

Ans.: Yes. Some time in the year 1782 or 1783, for which Mr. Groesbeck paid him £4, New York currency.

Witness C. S. His
JEAN BAPTISTE X PETRÉ.
mark.

Plaintiff called as witness Jean Baptiste Couteur, Sen., of full age, not interested, who was duly sworn to declare the truth.

Ques. by plaintiff: Avez vous connaissance d'avoir vendû et quand, une maison a Mons. Teller, pour quelle somme, et de qui avez vous reçu le payment?

Reponse: Il y a sept ou huit ans qu'il a vendu à Mons. Groesbeck une maison et emplacement a la Côte des Pour pour deux cents ponds qu'il à reçu de Mons. Groesbeck, mais qu'il passa le Titre à Mons. Teller.

Witness C. S. Sa
JEAN BAPTISTE X COUTEUR.
marque.

Continued on motion of Wm. Roe to next adjournment.

Continued on motion of plaintiff.

Pierre, Gabriel,
and Toussaint
Chene
vs.
Pat. McNiff.

McDougall
vs.
Lyon, on the
opposition of
André Decaroux.

Mr. Roe, for plaintiff. Opponent appeared in person.

The opponent called as witness to support his opposition François Raçet, of full age, not interested, who was sworn to declare the truth, the knowledge he has of an account between defendant and André Decaroux, respecting the building of a boat.

Declares: Qu'il était temoin d'un arrangement entre Geo. Lyons et Decaroux, pour la construction d'une batteau, quand Mr. Lyons c'est obligé de fournir tous les matteriaux et un homme pour l'aidé avec des vivres pour l'homme, pour Decaroux et sa femme pendant qu'il travaillerois et de lui payer par desus vingt ponds quand l'overage serait fait.

Witness C. S. Sa
FRANÇOIS X RAÇET.
marque.

Continues on motion of opponent for further proof.

Issued subpoena to opponent 22nd. Returnable 29th September. C. S.

CAUSES UNDER
TEN POUNDS.

Charles Beaubin
vs.
James May

Dismissed.

Frederick
vs.
Vessinau.

Continued the next Court day.

Bellecour
vs.
Monforton.

Continued to next Court day.

The King, on in-
formation of
Wm. Harthorn,
vs.
Wm. Hands.

This cause dismissed upon deliberation for want of proof, the ordinance requiring the conviction to be summary, and it brings against reason that a defaulter on a penal statute should be held over to second appearance for a trifling fine by the mere neglect of the informer to make out his case on the first summons.

The same vs.
Jno. Wheaton.

Dismissed.

The same vs.
Presque Cotté.

Dismissed.

The same vs.
Francois Gerardin.

Dismissed.

The same vs.
Thomas Smith.

Dismissed.

Court adjourned to 29th September, 1791.

CHAS. SMYTH, *Clerk.*

WM. D. POWELL, *J.C.P.*

Province of
Quebec.
District of Hesse.
29 September,
1791.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on Thursday, the 29th day of September, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esq., first Judge of the said Court.

Edward Hazel
vs.
Meldrum & Park.

The plaintiff in person. Mr. Roe for defendant. The plaintiff called as witness in this cause Wm. Lee, of full age and not interested, who was duly sworn to declare the truth.

Ques. by plaintiff: Have you any knowledge of a quantity of cordwood furnished by plaintiff and loaded in Mr. Heward's vessel, commanded by Mr. McKay, if so declare when, and the number of cords to the best of your recollection?

Ans.: That about seven years ago this fall he was employed by Edward Hazel to draw to the water-side a

quantity of cordwood, cut by the witness and Benj. Knap upon Captain Bird's lot. That he is certain that the vessel which took it away was loaded four times, and he believes a fifth time; that to the best of his knowledge and belief the vessel carried ten cords at each loading; that he has knowledge that the said wood was delivered upon account of Mr. Heward, as he was part of the time upon the spot to receive it and even bought some from the witness; that he has also knowledge that in the same fall the same vessel was several times loaded by the plaintiff with wood cut by himself; cannot say how often, but to the best of his belief it was at least three or four times, and that Mr. Heward himself came down for the wood.

Ques. by plaintiff: Do you know if the plaintiff took care of the vessel during the winter whilst she was frozen up on the ice?

Ans.: That he knows the plaintiff took care of the vessel from having frequently assisted him to drive away the ice.

Ques. by plaintiff: Have you any knowledge that the plaintiff delivered any quantity of cordwood to Mr. Park in the following spring, and the number of cords?

Ans.: That the witness with three others were employed by the plaintiff to cut cordwood for the spring; that he knows one hundred cords were put on board the vessel in the spring; that he does not know on whose account the wood was delivered, but always understood that it was for Mr. Park, as Callagan, one of the boatmen, told him so, and the witness himself saw Mr. Park at the plaintiff's in the winter, when he was bargaining for firewood as the witness was told by the plaintiff at this time.

Cross-questioned by Mr. Roe: Do you recollect that Mr. Park's people cut any wood near Mr. Hazel's that fall?

Ans.: Yes, that Mr. McKay and some others cut a quantity of wood on the Isle of Boisblanc that fall.

Ques. by defendant: Do you know how the wood, cut by Mr. Park's people, was carried away?

Ans.: In the same vessel.

Ques. by defendant: Was such conveyance before or after the wood carried from the plaintiffs?

Ans.: That they took away the wood from Mr. Hazel's whilst there was any there, but McKay, the master of the vessel, finding there was not wood to land went to the Island to get a load, and urged the witness and Knap to go down to the Island to help; that they went and cut six cords in two days, that the vessel was loaded, went to Detroit twice to his knowledge, and then returned to the plaintiffs, where the vessel was froze up.

On prayer of witness Court taxes his allowance at 2s. 6d., Halifax, per day for two days. C. S.

Witness C. S.

His
WILLIAM X LEE.
mark.

The plaintiff calls as witness Benj. Knap, of full age and not interested, who was sworn to declare the truth.

Ques. by plaintiff: Do you recollect, or have you any knowledge, of a quantity of cordwood furnished by plaintiff to Mr. Heward in the vessel commanded by Mr. McKay? If so, declare the quantity and when it was delivered to the best of your knowledge.

Ans.: That he helped to cut, cart and split wood for the plaintiff about six or seven years ago in the fall; that the wood was received by one, Mr. McKay, in a small vessel; that he does not know the exact quantity, but that the vessel was loaded different times, he thinks more than twice; that the plaintiff's team being worn out, the witness, with Wm. Lee, went to the Island of Boisblanc for two days to cut wood and load the vessel.

Ques. by plaintiff: Have you any knowledge that the plaintiff furnished any, and what quantity, of firewood to Mr. Park in the spring following?

Ans.: That he has no knowledge other than that the plaintiff told him in the winter that he had contracted to cut a hundred cords, but did not say for whom; that in the spring the plaintiff told him that he had finished his complement and the witness saw McKay's vessel loading in the spring at Mr. Hazel's.

BENJAMIN KNAP.

On prayer of witness Court taxes his allowance at 2s. and 6d. per day for four days. C. S.

The plaintiff called as witness Antoine Beauford, who was sworn to declare the truth.

Ques. by plaintiff: Avez vous connoissance d'avoir mené Mr. Park de chez vous, jusau'à chez le demandeur a fin de l'engagé à soinge une battiment au defend'r qui étoit pris dans les glaces aupres de chez Mr. Hazel, et quand ce la s'est arrive?

Ans.: Que vers les faites de Noel il y a six ans à ce qu'il croire, Mons. Park l'engagé de l'amener chez Mons. Hazel pour faire un arrangement avec lui pour soingé son battiment pendant l'ever, qu'arrivant chez Hazel il lui a dit ce la et la depuis Mons. Park et Hazel ont visiter a deux repris le battiment qu'éte pris dans la glass et ils ont monter ensemble dans la griner de Mons. Hazel, mais quelles ont été leur convention il ne pourra dire mais

qu'ayant représenté a Mons. Park qu'il fallù se depacher pour se rendre, il repondit qu'il avait fait un affair et apres avoir lû avec Mons. Hazel il s'en retournè.

Sa

Witness C. S.

ANTOINE X BEAUFORD.
marque.

The plaintiff represents to the Court that he has closed his proof and prays the judgment of the Court thereupon.
Continued by the Court en deliberé.

Mr. Roe for plaintiff. Mr. Smith in person.

Meldrum & Park
vs.
Thomas Smith.

That upon the suggestion of Mr. Smith the defendant and interviewing plaintiff that he cannot obtain the attendance of all his witness, two being about to leave the place and others being absent. It is ruled by consent, that such witnesses as are about to leave the place, may be examined on interrogatories on Thursday next, and that the cause be set down for trial in three weeks. C. S.

Mr. Roe for plaintiff. On motion by Mr. Roe this cause is set down for trial on Thursday next, upon due proof of notice to the defendant, who does not appear.

Gabriel, Pierre,
and Toussaint
Chene
vs.
Art. McCormick.

Issued subpœna to plaintiff's attorney 4th October, 1791. C. S.

Mr. Roe for plaintiff filed replication marked C. Defendant does not appear.

Pierre, Gabriel,
and Toussaint
Chene
vs.
Pat. McNiff.

On motion by Mr. Roe this cause is set down for trial on Thursday next, upon due service of notice on defendant.

Issued subpœna to plaintiffs 4th October, 1791. C. S.

Plaintiff appears in person. Mr. Roe for defendant. The plaintiff produced Mr. Ant. Beauford, of full age and not interested, who was sworn to answer to certain interrogatories filed last court day, marked G.

Pierre Durand
vs.
John Lips.

Ans. to first interrogatory: Oui l'année passé quelque jour devant la St. Michel.

Ans. to second interrogatory: Oui.

Ans. to third interrogatory: Oui.

Ans. to fourth interrogatory: Non. Mr. Durand l'a fait par ordre des arbitres—outrément la graine auroit était à la bris des anemaux ce qu'ils na pas était.

His

Witness C. S.

ANTOINE X BEAUFORD.
mark.

Continued on motion of plaintiff for three days.

McDougall
vs.
Lyons, on the
opposition of
André Decaroux.

Mr. Roe for plaintiff. The opponent in person.

Court orders that the sheriff proceed to the sale of the boat seized as the property of the defendant in satisfaction of the plaintiff's judgment, subject to the payment of twenty-five pounds, eighteen shillings and sixpence, New York currency, for labour and materials expended on the said boat, by the opponent, he filing in the office the certificate of Geo. Lyons, sworn before a Justice of the Peace, stating the items of the balance due to the builder, which sworn certificate is admitted by consent of parties. Costs of the opposition to be paid to the opponent out of the proceeds of the estate.

Groesbeck
vs.
Visgar.

The defendant attended in person, and on consent of Mr. Roe, cause was continued for trial on next court day.

**CAUSES UNDER
TEN POUNDS.**

J. Bapt. Frederick
vs.
Louis Vessienau.

Plaintiff in person. Cause continued eight days. Court allows witness ten shillings, Halifax.

JOHN McCLEAN.

Bellecour
vs.
Monforton.

Continued for eight days.

Harffy
vs.
Hugh Holmes.

Parties not appearing; dismissed.

Harffy
vs.
J. B. Labadie,
dit Balleschamp.

Parties not appearing, cause dismissed.

Thos. Smith
vs.
André Decaroux.

Judgment for plaintiff for the sum of eight shillings and sixpence, Halifax, in terms of the declaration.

John Smith
vs.
André Decaroux.

No return; dismissed.

Wm. Searl
vs.
Pierre Cardinal.

Parties appearing, cause continued eight days.

Court adjourned to 6th October, 1791.

CHAS. SMYTH, Clerk.

W. D. POWELL, J.C.P.

Province of
Quebec.
District of Hesse.
6 Oct., 1791.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on Thursday, the sixth day of October, 1791, pursuant to adjournment.

Present: The Honourable William Dummer Powell, Esq., first judge of said Court.

Pierre Durand
vs.
John Lips.

Plaintiff appeared in person. Mr. Roe for defendant. Plaintiff produced as witness Francois Revaux dit La

Jeuness, who was duly sworn to certain interrogatories already filed marked A.

Ans. to first interrogatory: Oui apres la Recolle de L'annee passe.

Ans. to second interrogatory: Ds appartient a Madam Laforest.

Ans. to third interrogatory: Le as aonnaissance d'auoir vu des tous des perches dan le feu de Mons. Lips mais el ne sail quils appartient.

Ans. to fourth interrogatory: Mon dn'a point de connoissance.

Sa

Witness C. S FRANCOIS X REVAUX DIT LA JEUNESS.
marque.

Continued on motion of plaintiff to next court day.

Mr. Roe for plaintiff. Defendant in person. Defendant files four exhibits marked with the letters N, O, P, and Q, and on motion of Mr. Roe the cause was continued to next adjournment for communication of the first exhibit.

Groesbeck
vs.
Visgar.

Mr. Hazel in person. Mr. Roe for defendant. The plaintiff files two papers marked with the letters F and G, and moves the Court for judgment. Continued by the Court en deliberé.

Edward Hazel
vs.
Meldrum & Park.

Mr. Roe for plaintiff appears and files notice of trial as ruled last court day marked P. Defendant in person appears.

Pierre, Gabriel,
and Toussaint
Chene
vs.
Arth. McCormick.

The defendant exposes to the Court and for answer to the plaintiff's demand submits that his agent, Geo. Lyons, did receive from the plaintiff thirty-one pounds, eleven shillings and sixpence towards the payment of one-half of the purchase of a lease bought at auction by the defendant at the plaintiff's request, upon agreement that on payment of such moiety the plaintiff should enjoy one-half interest in the said lease, but they failing to pay in such entire moiety, the defendant was kept out of the enjoyment his said purchase, from the 8th day of August, 1790, to the 25th of January, 1791, during which periods the plaintiffs enjoyed the said lease in toto, for which the defendant considered that the said sum of £31 7s. 6d. was not more than sufficient compensation, of which he prays judgment, and that he may be dismissed from this action with costs. And the plaintiffs, by their attorney, for replication to the defendant's plea says that during the period stated in the said plea the said premises were in the power of the

Sheriff of this District, to whom the plaintiffs were accountable, and further that such possession was at the repeated request of the defendant, whereof he prays judgment. The defendant files Exhibit F.

Judgment for plaintiff for the sum of nineteen pounds, twelve shillings and twopence, lawful money of the Province, with costs.

Issued execution 28th October, 1791, set first Court in May, 1792.

| | |
|-----------------|-----------|
| Debt | £19 12 2 |
| Costs | 7 4 3 |
| | <hr/> |
| | £28 16 10 |
| Writ | 0 5 0 |

C. S.

Pierre, Gabriel,
and Toussaint
Chene
vs.
Pat McNiff.

Mr. Roe appears for plaintiffs. Defendant appears in his proper person. The plaintiff filed subpoena issued in this cause marked D, and produced Geo. Lyons as witness, who was duly sworn to declare the truth.

Ques. by plaintiff: Have you knowledge that at any time, and when, Mr. McCormick, as stated in the declaration, gave the plaintiff permission to sow the farm now in possession of the defendant?

Ans.: That he the witness conversed with Mr. McCormick respecting the plaintiffs' sowing the land in question before the seed was put into the ground; that Mr. McCormick seemed to have no objection, but has no further knowledge of any except permission by Mr. McCormick before the seed was sown, other than his declaring himself satisfied that it should be done; that the plaintiffs might be able to pay for the land as soon as possible.

Ques. by plaintiff: Were you present at any time, and when, at a conversation between Arthur McCormick and Toussaint Chene, one of the plaintiffs, and if so what was the tenor or purport of such conversation?

Ans.: That he was present after the sale of the farm by the Sheriff, but at what period he does not exactly recollect, with Mr. McCormick, and the three plaintiffs, when the former asked the latter how much wheat they had sown upon the farm, to which they replied that they had received twenty-five bushels of Fall wheat and intended to sow thirty bushels of Spring wheat, upon which Mr. McCormick observed that he was well pleased, as that would enable them to make up his money.

Ques. by plaintiff: Do you know how much wheat was sown by the plaintiff last fall upon the farm in question?

Ans.: That he knows only from their own report that they had sowed twenty-five bushels.

Cross-questioned by defendant: Do you know, that at the time Mr. McCormick gave the permission as you suggest, if it was intended for the benefit of Charles Chêne and his wife and their minor children, or for the benefit of their other children?

Ans.: That he has no knowledge of any such distinction.

Ques. by defendant: By whom was the farm that the defendant now lives upon occupied at the time the conversation passed which you have now related?

Ans.: That it was occupied by Charles Chêne and Gabriel and Toussaint Chêne, his sons, and that Pierre Chêne lived upon his own lots.

Ques. by defendant: Have you any knowledge that Pierre Chêne, one of the plaintiffs, laboured the farm in question, jointly with the other two plaintiffs?

Ans.: That he has none.

GEORGE LYONS.

The plaintiff called upon Gregor McGregor, Esq., Sheriff of the District, who was duly sworn to declare the truth.

Ques. by plaintiff: Did you at any time, and when, in your capacity of Sheriff, put the plaintiffs forcibly out of possession of the farm now occupied by the defendant, and if so at whose requisition?

Ans.: That in the month of January last, at the requisition of Mr. Arthur McCormick, upon his payment to the witness of the price at which the lease of Chêne's farm, now occupied by the defendant, was adjudged to him, the witness gave him legal possession, but used no force to dispossess the plaintiffs, for on his appearance the house and farm was delivered up by the occupier.

Cross-questioned by the defendant: Whom did you dispossess of the farm in question?

Ans.: Charles Chêne was the defendant whom he was to dispossess.

GREGOR MCGREGOR, *Sheriff*.

Plaintiff called as witness Francois Deruisseau de Bellecour, who was duly sworn to declare the truth.

Ques. by plaintiff: Did you at any time, and when, in your capacity of acting Notary, prohibit the defendant from cutting the wheat growing on the farm now occupied by the defendant, the property of the plaintiffs, if so was such prohibition signified to him in writing?

Ans.: That on the 15th of July, last, the witness, at the requisition of Pierre, Gabriel and Toussaint Chêne, protested to the defendant against cutting the wheat growing upon the farm he now occupies, which the said Chênes claimed to be their property, as having sowed it in the fall; that defendant was then at harvest and told him that he was cutting his own wheat and had no other answer to make him, and this is presence of Chevallier de Celleron and Jos. Barron, and that a copy of the protest now filed and marked Y was left with the defendant.

S'D. D. BELLECOUR.

Mr. Roe, attorney for plaintiff, files in court the *Essoin* of Chevallier de Celleron, one of the witnesses subpoenaed in this cause, and prays for further delay to hear the first witness, and that the record may be left open for further proof. Continued accordingly to next court day.

Issued subpoena 11th October, 1791, at instance of defendant for James May vs. James McIntosh.

Lyons
vs.
L'Enfant.

On motion of Mr. Roe this cause continued for six weeks.

UNDER TEN
POUNDS.
J. B. Frederick
vs.
Louis Vessenau.

Judgment for two pounds, thirteen shillings and fourpence, currency, and costs.

Bellecour
vs.
Monforton.

Continued for eight days.

Wm. Searl
vs.
Pierre Cardinal.

The parties appear. Judgment for one pound currency with costs.

Court adjourned to 13th October, 1791.

CHARLES SMYTH, *Clerk*.

W. DUMMER POWELL.

Province of
Quebec.
District of Hessa.
13 October, 1791.

COURT OF COMMON PLEAS, holden at L'Assomption in the said District, on Thursday, the 13th day of October, 1791, according to adjournment.

Durand
vs.
Lips.

The parties appeared. Continued by plaintiff on motion. Plaintiff produced Joseph Revaux, who was duly sworn to answer to interrogatories marked C already filed.

Vers le fin d'Octobre dernier Jean Lips à demandé au témoin la permission de se reterer chez lui on cas qu'il perdra son prouvs avec Durand il seroit obligé de quitte sa terre a quoi le témoin a consenté.

Sa
JOSEPH X REVAUX.
marque.

Parties appeared, continued en deliberé on plaintiff's attorney moving for judgment.

Groesbeck
vs.
Visgar.

Parties appear. Continued en deliberé.

Hazel
vs.
Meldrum & Park.

Mr. Roe for plaintiffs. Defendant in person. Mr. Roe called as evidence in this cause Alexis Labadie, of full age and not interested, who was duly sworn to declare the truth.

Pierre, Gabriel,
and Toussaint
Chene
vs.
P. McNiff.

Ques. by plaintiff: S'il a connaissance que les demandeurs aient semé le bled et quelle quantité sur la terre actuellement occupé par le defendeur et en quelle terms?

Ans.: Qu'il sait de sa propre connaissance que les demandeurs ont ensemé la terre occupé maintenant par la defendeur, que ils ont mis vingt cinq minots de sémance à peu pres de ce tems ici de l'annee passée.

Ques. by plaintiff: S'il connoit qui en à fait la recolte?

Ans.: Qu'il sait que ce Mons. McNiff qui a recolté.

Ques. by plaintiff: Avez vous connaissance et en quelque temps les demandeurs en demandé permission de Mons. McNiff de couper ce blé?

Ans.: Il sait que Mons. McNiff voulant couper ce meme blé, les demandeurs lui ont fait defence dissant qu'ils entendé de recolte en même, que le temoine et Jos. Barron furent present lorsque cet representation a été fait à Mons McNiff, qui leurs faisait comprendre qu'il ne les entendent pas, mais c'étant expliqué par un interpret, il leurs faisait dire que ce ils veulent l'empacher de couper son blé, il fallût lui baillé l'ordennance du Juge ce qu'il repeter lui meme en bon fraingois.

Ques. by plaintiff: S'il étoit present lorsque les demandeurs furent mis dehors de deplus la terre actuellement occupe par la defendeur?

Ans.: Que ce prentems il arrivé dans le moment que Mons. McCormick se disputé avoient les Chênes, mais qu'il n'étoit point temoin qu'il les avoit chaser hor de la maison. les butins etant s'entre avant l'arrivé du temoin.

Sa

ALEX. N LABADIE.
marque.

Mr. McNiff, being present in Court, moves that his exceptions marked X be filed on record in this cause, which being granted by the Court the defendant, Pat. McNiff, is informed that he must find an interpreter himself.

Mr. Roe produced as witness in this cause François Gamelin, who was duly sworn.

Ques. by plaintiff: S'il a connaissance que les demandeurs aient semé du blé sur la terre actuellement en proportion du defendeur, en quelle tems et quelle etoit la quantité?

Ans.: Qu'il sait que dans le mois de sepembre de l'année dernier, ils ont semé sur la terre, qu'occupe actuellement le defendeur, mais quelle quantité il ne pouvoit dire, mais que sur la même quantité de terrain qu'ils ont semé, le temoin a coutume de semé vingt quatre ou vingt cinq minôts.

Ques. by plaintiff: S'il a connaissance qu'est qu'a le recolté?

Ans.: Que selon sa connaissance c'étoit Mons. McNiff.

Ques. by plaintiff: Ce, avant que le blé a étoit coupé le temoin a la requisition d'aucune des parties en a estimé la quantité?

Ans.: Qu'oui à l'instance de Bellecour Notaire, le temoin avec Robert Navarre, le Sieur Godefroy, et Etienne Nevernois en ont fait l'estimation dans leurs ames et consciens à deux cent cinquante minots.

FRANÇOIS GAMELIN.

Mr. Roe produced as witness Mr. Robert Navarre, who was duly sworn.

Ques. by plaintiff: S'il a étoit appelé par les demandeurs pour estimer une pièce du blé sur la terre actuellement occupé par la defendeur, en quelle tems, et quelle quantité ont il trouver selon leurs estimation?

Ans.: Que vers le fin de juliet a la requete de Mons. Chênes il se transporta sur al terre actuellement occupé par le defendeur, accompagné de Mons. Gamelin, Godfroy, and Nevernois, et qu'il a estimer la piece a deux cent cinquante Minot, conjointement avec les autres messieurs.

ROBERT NAVARRE.

Defendant filed subpoenas issued in this Court and called upon James May as witness, who was duly sworn to declare the truth.

Ques. by plaintiff: Have you any knowledge that the defendants or any of them, on or about the month of August, twelve months past, or at any other time, and when applied to Mr. Geo. Lyons for leave to sow the land now-occupied by the defendant, and if so, what is that knowledge? Relate the whole thereof to the best of your recollection and belief.

Ans.: That on about the month of August, twelve months past, the witness, who was employed by Mr.

McCormick to dispose of some rum to raise the price of the farm in question, received a letter from Mr. Lyons, requiring the witness' opinion on the propriety of granting leave to the plaintiffs to sow the said farm, that before the witness had answered this letter Mr. Lyons waited upon him in person to urge the witness' opinion, which the witness gave to Mr. Lyons against his exercising any authority under a power of attorney from Mr. McCormick respecting the said farm, which the witness supposed to be conditional, and knew to be lodged in the hands of Mr. Roe, to remain there until Mr. Lyons should have effected the payment of sixty pounds toward the purchase money of the said farm, which the witness then understood would entitle Mr. Lyons to a joint interest in it with Mr. McCormick, and the entire management of it during his absence; that Mr. Lyons, on a subsequent occasion, informed the witness, which was confirmed to him by Ch's Chêne, the father of the plaintiff, that he had given permission to the plaintiffs to cultivate the farm in question, although he could not raise the said sum of sixty pounds, and had not then withdrawn from Mr. Roe Mr. McCormick's procuration; that thereupon the witness observed to Mr. Lyons that he had committed himself in a matter in which he had no power and that he might draw upon him a disagreeable discussion with Mr. McCormick; that meantime after the father of the plaintiffs was dispossessed by the Sheriff, and Mr. McCormick put into possession, Charles Chêne came to the witness complaining of Mr. Lyons' conduct in pretending to have full power from Mr. McCormick, which had turned out to be only conditional, and after requesting the witness' opinion of the probable event of the dispute then foreseen respecting the grain, observed to the witness that at all events if they should lose their crop they must recover the value from Mr. Lyons, who had induced them into the error.

Ques. by defendant: Have you at any time heard any of the actual plaintiffs, and which, observe that if they sustained any damage by means of the transaction as before related, they would have recourse to Mr. Lyons for the reimbursement of the same?

Ans.: That in conversation with Pierre Chêne, one of the plaintiffs, respecting this dispute, when the witness' opinion who should make good to the plaintiffs the ultimate loss on the transaction was asked, and he not being able to give a decisive opinion, the plaintiff said to the witness "It is my opinion we must recover against Mr. Lyons as being the person who authorized us to sow."

Ques. by defendant: Have you any knowledge of any application by Mr. Lyons or either of the plaintiffs to pro-

cure Mr. McCormick's consent to and ratification of, their sowing upon the land, subsequent to his being put into possession?

Ans.: The witness has no knowledge of any such application by the plaintiffs, but heard Mr. Lyons express his wish to see Mr. McCormick to procure from him his approbation of what Lyons had done under the supposed power of attorney, and urged the witness to use his influence with Mr. McCormick to that effect.

Ques. by defendant: Have you knowledge that the grain in question was the property of Charles Chêne and his family?

Ans.: The witness understood from Charles Chêne that the seed in question belonged to him and his family, the greater part of his own raising, and that he had made an exertion in hopes of a large crop to enable Mr Lyons to make good his arrangement with Mr. McCormick for one-half of the farm for his family.

Ques. by defendant: What did you understand the family to consist of?

Ans.: Of Charles Chêne, his wife, Toussaint, Gabriel and Agathe, and a young boy in the house.

Ques. by defendant: Did you consider Pierre Chêne, one of the plaintiffs, as belonging to the family?

Ans.: No, as he was married and lived separate from his father, and had done so for many years.

Cross-questioned by Mr. Roe: Do you know if Mr. McCormick at any time, and when, resided with Charles Chêne and his family?

Ans.: That he knows by having been told so by Mr. McCormick himself that after his return from Canada last winter he hired a room in the house then occupied by Charles Chêne upon the farm in question, for which he was to pay to the said Charles Chêne forty shillings per month.

Ques.: Did you at any time during Mr. McCormick's residence in Chêne's house, hear him express himself satisfied that the Chênes have sowed so much wheat on the farm?

Ans.: That at some period of the winter, while Mr. McCormick resided with the Chênes, the witness heard him often express himself satisfied that they had a prospect of so large a crop, as he expected the produce of it should enable them to pay their half of the purchase money which Mr. Lyons had agreed for; that at this time the witness understood that an immediate payment of the difference between £31 7s. 6d., which the witness had received from Mr. Lyons in behalf of Mr. McCormick, on account of the

purchase money and the sixty pounds he had agreed to raise should be made, and the witness understood from Mr. McCormick that some words having arisen between him and the Chênes respecting the delay of such payment, he had been obliged to quit the house.

Ques. by the Court: What was the price of wheat at the time the wheat in question was sowed?

Ans.: Thirteen shillings and fourpence, York currency.

JAMES MAY.

The defendant produced Mr. James McIntosh, who was duly sworn as witness in this cause.

Q.—Have you any knowledge that the plaintiff or either of them at any time, and when, last winter declared that they were ruined by Mr. Lyons' permission to them to sow the said land, and that if they were not permitted to reap they would have their recourse upon Mr. Lyons?

Ans.: That he never had any conversation with either of the plaintiffs to the best of his recollection, but that Charles Chêne, the father, and the mother have often observed to the witness how much they had been injured by Mr. Lyons, and that if they did not recover from McCormick they should look to him (Lyons) for compensation.

JAMES MCINTOSH.

The defendant submits to the Court that his principal voucher, being Mr. McCormick's lease to him of the farm in question, is already before the Court in a certain cause lately agitated, and prays that the Clerk may be ordered to bring up the said lease. Ordered accordingly.

Mr. Roe, for plaintiffs, prays the judgment of the Court. Continued en délibéré.

Continued.

Court adjourned to 20th October, 1791.

W. D. P., *J.C.P.*

C. SMYTH, *Clerk.*

UNDER TEN
POUNDS.
Bellecour
vs.
Monforton.

COURT OF COMMON PLEAS holden at L'assomption in the said District on Thursday, the 20th day of October, 1791, according to adjournment.

Present: Wm. Dummer Powell, Esq., First Judge of said Court.

Province of
Quebec.
District of Hesse.
20 October, 1791.

Mr. Roe, of counsel for plaintiff, filed declaration. Defendant being called and not appearing, Mr. Roe prayed default.

James McDonnell
vs.
Charles Poupard,
dt. Lafleur.

The same
vs.
Louis Meloche.

Mr. Roe, of counsel for plaintiff, filed declaration and defendant appearing acknowledged to owe as in the said declaration it is set forth, whereupon Court considers that the plaintiff do recover the sum of seventeen pounds, four shillings and eightpence currency with costs of suit.

Durand
vs.
Lips.

Parties appeared. Plaintiff produced Zacharie Cloutier as witness in this cause, who was duly sworn to certain interrogatories already filed marked G.

Ans. 1st: Qu'oui.

Witness, C. S.

Sa
ZACHARIE X CLOUTIER.
marque.

Continued en délibéré by the Court on motion for judgment by plaintiff.

Meldrum & Park
vs.
Louis Campeau.

Sheriff returned writ of fi. fa. issued in this cause with opposition of Jacques Campeau annexed to the sale of a certain lot of land seized as belonging to the defendant. Jacques Campeau appeared in support of his opposition.

Mr. Roe for plaintiffs. Opponent filed Ex. A and on motion continued to next adjournment for production of titles, etc.

Meldrum & Park
vs.
Thomas Smith.

Mr. Roe of counsel for plaintiffs. Defendant in person. Plaintiff filed subpoenas D, and produced as witness in this cause Wm. Christie, who was duly sworn to declare the truth. Who says that on the 5th of February, 1788, he was clerk to the plaintiffs and delivered the three items charged, two pounds, twelve shillings, in defendant's account under that date to Molly Crofton on defendant's account; that the plaintiffs were accustomed to deliver goods to that person on defendant's account, but whether they were authorized so to do by the defendant directly or indirectly by payment of articles so delivered the witness cannot say.

Ques. by plaintiff: Did you at any time, and when, deliver to the defendant the plaintiff's account containing the three said items of charge, and did he accept or deny the same?

Ans.: That in April, 1789, he delivered the plaintiff's account to the defendant containing the said three items of charge, to which the defendant made no other objection than to a charge of thirty shillings under the 29th February, 1788, for articles delivered to Molly Crofton without order.

Cross questioned by defendant: Do you recollect, at any time the defendant objecting to a charge of a quantity of iron in plaintiff's account, and what is your knowledge on the subject?

Ans.: That he recollects such objection being made, the settlement thereof being referred by one of the partners on account of the absence of the other, he thinks by Mr. Meldrum, to the return of Mr. Park, but the original transaction was prior to the witness living with the plaintiff.

Ques. by defendant: Do you recollect at any time, and when, the defendant forbid the plaintiffs to deliver anything on his account without a written order?

Ans.: That he does recollect such directions being given by the defendant, but cannot say at what period, but thinks that subsequent to such direction no credit was given on defendant's account without his order.

WILLIAM CHRISTIE.

Plaintiff produced Jno. Bapte Craiste as witness, who was duly sworn.

Ques. by defendant: Avez vous reçu, et en quell tems de demandeurs par ordre de Mr. Smith une quantité de ferment de moulin?

Ans.: Qu'il construisé un moulin a la pienier en 1783 que Mr. Smith devoit lui fournir les ferments que faisoit Ballar fourgeron, que le temoin se rendant chez Ballar pour recevoir l'ouvrage apris de lui que tout le fer de Mr. Smith avoit été enlever par les merchants de Fort—qu'apres le temoin apris de un quellque un que le fer était chez Mons. Park a qui le temoin s'adressa pour le retiré, que Mons. Park lui promette qu'il farrait fair son ferment, et en effet le temoin a son retour de la pineir le reçu de Mons. Park, mais qu'il ne scaurai dire si dans cet occasion Mr. Smith l'adresser a Mons. Park ou non.

Cross questioned by defendant: Quelle connaissance avez vous, que Mr. Smith à vraiment remis au fourgeron Ballar la quantite de fer necessair pour les ouvrage qu'ils s'était obligé de vous procurer?

Ans.: Qu'il y a si longtemps qu'il ne se souvenait plus de parole mais il sait que ballar la fait comprendre dans tems que Mr. Smith lui avoit remis toute la quantité de fer mais que d'autres persons l'ont enlever pour ses dettes.

Witness, C. S.

J. B. CRAISTE.

Defendant produced Wm. Christie, witness in his defence, who was duly sworn.

Ques. by plaintiff: Have you any knowledge that the plaintiff employed the defendant to survey a certain tract of land at the Pinery? Declare when and generally your knowledge of the transaction.

Ans.: That in the winter, he thinks of the year 1789, the plaintiff did employ the defendant, then going up the river, to survey at the Pinery, and that at desire of the plaintiff the witness made out a memorandum now filed marked Z, in order to guide the defendant in the survey.

WILLIAM CHRISTIE.

Defendant produced Jno. Baptiste Craiste, who was duly sworn.

Ques. by plaintiff: Avez vous connaissance que les defendeurs l'année 1790 ont enlever de la pinier une quantité de bois a moi appartenant?

Ans.: Que l'année 1790 Mons. Park a emporter environs douze ou quinze morceau de bois appartenant a Mons. Smith et le restant de bois le temoin a entendu dire avoir été aussi importé par Mons. Park, mais il ne l'a pas vû.

Ques. by defendant: Du mois de Janvier jusqu'a mois d'avril 1790 étiez vous en prison a la poursuite des demandeurs et dans cet temps, avez vous presenter a la Cour deux Requet representant votre situation et demandant le privilege d'un debiteur?

Ans.: Oui.

Ques. by defendant: Comment avez vous obtenu votre liberté?

Ans.: Qu'il obtenû sa liberte par la vente de ses droits qu'il pouvoit avoir dans le moulin de la pinier.

Ques. by defendant: Auriez vous consente a telle vente si autrement vous pouvez obtenir votre liberté?

Ans.: Que non, sans le plus grands avantage qu'il n'a reçu.

Ques. by defendant: Dans l'automn 1790 avant d'être emprisonné le defendant vous ont t'il proposé un acquittance avec cent ponds pour le moulin a la pineier, a condition que le defendeur leur cederà ses droits?

Ans.: Que les demandeurs lui ont offer de compromettre leur differents, et de l'acquiter, si Mr. Smith voulu retirer une action qu'il avait alors ententer contre le temoin et ceder la vente que le temoin lui avoit fait un le moulin.

Ques. by defendant: Si les demandeurs n'ont pas offert à votre femme une presente de l'Indiennes, si Mr. Smith ne rentré dans le moulin?

Mr. Roe for the plaintiffs excepts to the above question as being impertinent to the cause. Overruled by the Court and the witness directed to answer.

Ans.: Que Mons. Park a promis a sa femme une presente d'Indienne s'il garder le moulin, mais s'il le perdit il perdra ausie en dechargeant le temoin de sa dette.

Ques. by defendant: Si les demandeurs vous ont donné une memoire par ecrit, du bois a la pineier, et si en meme tems Mr. Park ne vous a pas dit, qu'il s'arrangera avec le defendeur pour le montant du dit bois?

Ans.: Qui oui. Le memoire filé a present marqué y.

Ques. by defendant: Si Mons. Park engager au mois d'avril, 1790, la conducteur des travaux du defendeur à la pineier, et si en consequence ces dit traveaux ne fus pas aneté?

Ans.: Oui.

Ques. by defendant: Si les engager de Mr. Smith pour la coupé de bois à la pineier en 1789 an 90, ne fus pas obligé de desender le bois au Detroit?

Ans.: Oui.

J B. CRAISTE.

Defendant produced Jno. Baptiste Roçout who was duly sworn.

Ques. by defendant: S'il a vû Toussaint Jasment faire sa marque a l'engagement filé marqué X apris lecteurs fait?

Ans.: Qu' oui.

Ques. by defendant: S'il a vu Jean Baptiste Craistte signé l'engagement filé marqué W?

Ans.: Qu' oui.

J. Roçout.

Defendant produced François Derruisseau de Bellecour who was duly sworn.

Ques. by defendant: If the protest interpellation and answer contained in Exhibit V now filed were made and obtained in his presence?

Ans.: Yes, in presence of the witnesses whose names are subscribed.

F. DE BELLECOUR.

Issued subpoena 1st November, 1791, to defendant, February 3rd.

C. SMYTH, Clerk.

On motion of Mr. Smith, with consent of plaintiff's attorney, cause continued for a fortnight.

Edward Hazel
vs.
Meldrum & Park.

Parties appear. On motion of defendant this cause continued for three months.

James McDonnell
vs.
Hugh Holmes.

Mr. Roe for plaintiff. Judgment for £7. 17s. 1d. currency on written confession filed and proved.

Bellecour
vs.
Monforton.

Parties appear. Continued.

Court adjourned to 27th October, 1791.

C. SMYTH.

W. D. P., *J.C.P.*

Province of
Quebec.
District of Hesse.
27 October, 1791.

COURT OF COMMON PLEAS, holden at L'assomption in the said District on Thursday, the twenty-seventh day of October, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

James McDonnell
vs.
Chas. Poupard.

Discontinued by plaintiff on motion.

Meldrum & Park
vs.
Louis Campeau,
on the opposition
of Jacques
Campeau.

Parties not appearing; cause continued.

CAUSES
UNDER TEN
POUNDS.
Bellecour
vs.
Monforton.

Continued.

Court adjourned to the Judge's Chambers for Thursday, 3rd day of November, 1791.

W. D. P.,
J. C. P.

CHAS. SMYTH,
Clerk.

Province of
Quebec.
District of Hesse.
3 November, 1791.

COURT OF COMMON PLEAS, holden at L'assomption in the said District, on Thursday, the third day of November, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge of the said Court.

Meldrum & Park
vs.
Thomas Smith.

Mr. Roe appeared and continued cause to next adjournment.

Durand
vs.
Lips.

Mr. Roe appeared; continued en deliberé.

Mr. Roe appeared; cause continued en deliberé.

Groesbeck
vs.
Visgar.

Continued on motion of Mr. Roe.

Meldrum & Park
vs.
Campeau, on the
opposition of
Jacques Campeau.

Mr. Roe of counsel for plaintiffs moves the Court for judgment, whereupon it is ordered by the Court, before it proceeds to judgment definitely, that a report be made to the Court of the real quantity of grain reaped by the defendant on the land sowed by the plaintiffs, together with the expense of harvesting, and that such report be made on oath by experts to be named by the parties respectively, two by plaintiffs and two by defendant, and, in case of difference of opinion, by a fifth, to be chosen by the other four, and if on due proof of service of this rule on either party it shall appear to the Court that one of the said parties shall refuse to name such experts in eight days, the Court will proceed to such nomination *ex officio*.

P. G. & Toussaint
Chéné
vs.
Pat McNiff.

Cause continued to next adjournment.

Continued on motion to first Court day in April next.

UNDER TEN
POUNDS.
Bellecour
vs.
Monforton.

Sheriff returns Writ of fi. fa. issued in this cause with return of *Nulla bona*, and it being suggested by Mr. Roe of counsel for the plaintiffs, that the defendant has goods and chattels in the said District whereof the said debt and costs may be made and levied. It is ordered that an alias Writ of Execution do issue commanding the Sheriff to levy the said debt and costs.

Meldrum & Park
vs.
Louis St. Obien.

Al. fi. fa. issued 3rd November, 1791. Returnable in May, 1792.

| | |
|------------------|---------|
| Sub. costs | £1 10 0 |
| Writ | 0 5 0 |

C. S.

Sheriff returns writ of fi. fa. issued in this cause, with the monies levied by virtue thereof, whereupon it is ordered by the Court, on motion of Mr. Roe, of counsel for the plaintiff, that the Sheriff do pay over to plaintiff the said monies, being twenty-one pounds, sixteen shillings and eightpence one farthing, in part satisfaction of his judgment.

McDougall
vs.
Lyons.

Court adjourned to 10th November inst.

WM. DUMMER POWELL,

CHAS. SMYTH,

J. C. P.

Clerk.

Province of
Quebec.
District of Hesse.
10 November,
1791.

COURT OF COMMON PLEAS, holden at L'assomption, in the said District, on Thursday, the 10th day of November, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

The Court met pursuant to adjournment, and further adjourned to Thursday, the 17th day of November inst.

WM. DUMMER POWELL,
J. C. P.

CHAS. SMYTH,
Clerk.

Province of
Quebec.
District of Hesse.
17 November, 1791.

COURT OF COMMON PLEAS, holden at L'assomption in the said District, on Thursday, the 17th day of November, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge of said Court.

P. G. & Toussaint
Chéné
vs.
Pat McNiff.

Mr. Roe. of counsel for the plaintiffs, files return of rule made in this cause on the 3rd day of November, inst. Defendant called; did not appear, but communicated in writing his receipt of the rule, and refusal to comply with the same, whereupon Mr. Roe, for the plaintiffs, proceeded to name Francois Gamelin and Alexis Labedie, and the Court requests Wm. McComb, Esq., and James May to join themselves with the said nominees to enquire and report on the quantity of grain reaped by the defendant from the ground sowed by the plaintiffs on the farm leased by the defendant of Arthur McCormick and also on the probable expense of harvesting the same, and report their opinion on oath to the best of their information and belief in eight days.

Meldrum & Park
vs.
Thomas Smith.

Mr. Roe, of counsel for plaintiffs. Defendant in person. Defendant files petition marked L with the order of first Judge for the appearance of Wm. Park, one of the plaintiffs in this cause, to answer on oath to certain interrogations thereunto annexed, whereupon the said Wm. Park appearing humbly submits to the Court how far he is bound to answer to said interrogations, inasmuch as the defendant hath brought forward certain witnesses to prove the facts stated in his plea, and prays that he may be exempted from answering the same, and the defendant suggests to the Court that he has not brought up any witnesses to answer to the facts of the said interrogatories, and prays that the said Wm. Park be sworn. Ordered accordingly.

Wm. Park, Esquire, one of the plaintiffs in this cause, was duly sworn to answer certain interrogatories filed as above.

Ans. to first interrogatory: Thomas Smith, about that period, lived at or about Mr. Intosh's house, and not appearing to me to have much to do, I asked him if he would transcribe a blotter whose leaves were loose into a new book, which he did; how long he was I cannot say, as he did not attend regularly, but I suppose a steady would do the same in five or six days.

Mr. Park objects to answer to the second interrogatory, as in the terms in which it is couched it would tend to charge himself with a public offence.

Whereupon the Court ordered that he do not answer to the same.

Ans. to third interrogatory: In the fall of 1783 I heard Bellar was making iron work for a saw mill, built at the pinery by John Baptiste Creste, and at or about the same period the said Bellar owed large sums to different merchants in Detroit, who considering the state of his affairs, agreed to take their payments out in work at prices agreed to, and in proportion to their respective debts. I was nominated to direct Bellar by the creditors, and to regulate the same, as well as to receive some old debts which were owing Bellar and divide them proportionally, when received; that the iron work of Creste's mill was looked upon as a debt of sixty pounds for the benefit of the creditors, when completed, and yet Bellar has not iron to finish the same, that upon Mr. Smith's application to me and a promise to pay the same, I gave Bellar an order upon Messrs. Sharpe & Wallace for as much iron as would finish the work, the amount of which was to be deducted from the sum promised. The iron work was, I think, completed, and to the best of my recollection, was delivered to Creste, but where and at what time I cannot say.

Ans. to fourth interrogatory: In the year 1788 I caused some pieces of timber to be taken out of Mr. Beaubien's yard by Creste's particular desire as his own, and accounted to him accordingly.

The fifth interrogatory was overruled upon representation of Mr. Park, that it is impertinent to the cause.

Ans. to sixth interrogatory: I never employed Mr. Smith to survey or fix boundaries either to Brown's land or Baptiste Druillard's farm, further than he came to our store and acquainted me he was going to measure and survey between the mouth of Detroit River and the River Raison and up that river, and asked if I had any commands that way. I told him that William Brown had an Indian deed for land there, and as he would be measuring the neighbour's farms, I would be glad to know the width of it and of Baptiste Druillard's farm.

Ans. to seventh interrogatory: In April, 1790, I carried from the pinery some boards or plank and some more in the course of that summer, being part of property sold and delivered to Meldrum & Park by J. B. Creste, that the quantity of timber specified in the Exhibit by me, was said to be upon the ground, but did not count it.

WILLIAM PARK.

Defendant called upon Walter Roe, Esq., as witness in this cause, who was duly sworn to declare the truth.

Ques. by defendant: Have you any knowledge and what of the defendant in the spring of 1790 accounting with Peter Laughton for twenty-eight and a quarter cords of firewood, four feet long, cut on the borders of the River St. Clair in autumn of 1789 in order to be thrown on the rafts on their way to Detroit?

Ans.: I do recollect having heard Peter Laughton say that he had cut some wood on the River St. Clair for Mr. Smith, the defendant, on account of Wm. Towns, who was then his servant, but whether the same was to be carried to Detroit or elsewhere witness knows not, neither has any knowledge of the quantity.

W. ROE.

Defendant produced as witness in this cause John Martin, of full age and not interested, who was duly sworn to declare the truth.

Ques. by defendant: Was the paper now filed and marked with the letter "M" purporting to be a deed of sale of the pinery by Mr. Jno. Baptiste Creste to Meldrum & Park, executed in your presence, and is the signature John Martin at the foot of the said deed of your handwriting, and was the tenor of the same explained to the said Creste in any language that he could understand before the execution of the said deed?

Ans.: That the deed now filed was executed in presence of the witness, and that the signature of John Martin is in the proper handwriting of the witness, that the witness recollects part of the deed was explained to J. B. Creste in French and that Mr. Park told him that it was the same that had been before read to him at the Sheriff's.

Ques. by defendant: Do you recollect any part of the contents of the deed?

Ans.: Yes. The witness understood that Creste gave up all his right and title to the pinery, whatever it might be.

JOHN MARTIN.

Defendant produced Matthew Dalson, who was duly sworn to declare the truth.

Ques. by defendant: Did you see the defendant surveying lands in the River St. Clair above and below the Belle River in January, 1789, or at any other period, Dalson?

Ans.: On the 9th of March, 1789, the witness saw the defendant run the chain from below the Belle Riviere down to Wm. Thorn's.

MATTHEW DALSON.

The item in the plaintiff's account under date of 7th September, 1785, being delivered on defendant's account by his verbal order, of which the plaintiffs have no evidence, they submit the same to the decisive oath of the defendant praying that in case he refuses the same the plaintiff's oath may be taken thereon, and also submit to the said oath of the defendant the item of credit of 20th January, 1784, which the plaintiff's suggest to have been occasioned by their breach of the specific agreement to make up the iron for the mill work on Mr. Smith's undertaking to pay the labour.

The defendant being duly sworn, answers:

That he recollects that when the iron furnished by him to Bellar for Creste's mill work was in part wrought up and withheld from Creste by Meldrum & Park until they should be paid or secured in the payment of the price of Bellar's labour, he, the defendant, did wait upon Meldrum & Park claiming the iron as furnished by him, and stating that the price of Bellar's labour was to be deducted in account, but if they, Meldrum & Park, had a right to the produce of Bellar's labour, and that he could not get his iron from them in any other way, he must of necessity pay them for that labour, and thinks that the three pounds, nine shillings paid by him to them on the 20th January, 1784, might be on account thereof.

T. SMITH.

The defendant files exhibits marked N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and the parties having finished their pleading mutually submit the same to the judgment of the Court.

Continued by the Court en deliberé.

Mr. Roe for plaintiff prayed the judgment of the Court. Defendant did not appear.

The Court having maturely weighed the declaration and answers in this cause, as well as the books, papers and vouchers exhibited by the plaintiff, considers that his

Wm. Groesbeck
vs.
Jacob Visgar,
Curator to the
Estate of Gar.
Teller.

suit be dismissed and that the defendant do recover his costs of Court to be taxed, and although the judgment in this case does not fully meet the words of the ordinance requiring in certain cases that the reasons and grounds of the judgments of the Courts of Common Pleas should be assigned of record. The Court considering the large claim of the plaintiff and the absence of those interested in the intestate estate, is willing for the satisfaction of the parties to state concisely, that notwithstanding the singular favor to plaintiffs by the ordinance admitting any proofs known to the practice of the laws of England or France heretofore introduced in the Province of Quebec, the Court can admit nothing upon trust on the plaintiff's assertion without some proof, and that the books and exhibits filed by the plaintiff afford none which can be deemed legal under any extent of the particular clause in the ordinance of 1789. First the books from whence the account is extracted are kept in so irregular a manner, even by the testimony of the divers persons who swear to the several entries, as totally to destroy their credit in every case, but where the entry is corroborated by actual proof of the delivery of the articles charged, for it is sworn that they were made in the Waste Book occasionally by strangers and passengers on the loose dictum of the plaintiff, frequently with a retrospect to a distant period. It is needless to remark the abuse which may be made of a precedent to sustain such sort of testimony, but they carry with them innate marks of error and negligence, which wanted not the age of foreign evidence to invalidate their testimony. The orders filed as vouchers have no docket or mark of entry to direct to the date in the Waste Book under which they stand to the debit of the deceased. How is it possible then to discriminate and apply a voucher of one date among many for similar articles to any precise entry? In such a total absence of legal evidence nothing would follow but a non-suit, unless the plaintiff had brought his action during the life of Teller, in which case under favor of the boundless clause, in the late ordinance your defendant might have been brought forward in some shape to discharge himself *in foro conscientio*, failing which presumption might have served the plaintiff, but the season is past and the curatum cannot be applied to upon the equitable principle that no one shall profit of his own wrong, and the whole complexion of the suit does not lead the Court to commiserate the plaintiff, who certainly if he loses anything must attribute it to his own supineness and neglect.

CHAS. SMYTH, Clerk.

On motion of opponent, and by consent of the plaintiffs, Court grants main levee of the seizure made on the land in question, and that the Sheriff be ordered to direct accordingly.

Meldrum & Park
vs.
Louis Campeau,
the opposition
Jacques Campeau.

On motion of Mr. Roe this cause is continued for three months.

Lyons
vs.
L'Enfant.

Plaintiff in person. Defendant being called, but did not appear, whereupon the Court after considering the plaintiff's demand condemn the defendant to pay to the plaintiff the sum of three pounds, seven shillings and sixpence with costs.

CAUSES UNDER
TEN POUNDS.

Charles Smyth
vs.
Pat McNiff.

Issued execution on 30th November, 1791. Returnable in two months.

| | |
|---------------|----------|
| Debt | £3 7 6 |
| Costs | 0 10 5 |
| | <hr/> |
| | £3 17 11 |
| Writ | 0 1 0 |
| Bailiff | 0 4 0 |

C. S.

Plaintiff in person. Defendant being called, but not appearing. Court after considering the plaintiff's demand, condemn the defendant to pay the sum of sixteen shillings and sixpence with costs.

Jos. Elam
vs.
Pat McNiff.

Issued execution 30th November, 1791. Returnable in two months.

| | |
|---------------|---------|
| Debt | £0 16 6 |
| Costs | 0 10 5 |
| | <hr/> |
| | £1 6 11 |
| Writ | 0 1 0 |
| Bailiff | 0 4 0 |

C. S.

Court adjourned to 24th November, inst.

CHAS. SMYTH, Clerk.

COURT OF COMMON PLEAS, holden at L'assomption in this District, on Thursday, the 24th day of November, 1791, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, First Judge of the said Court.

Province of
Quebec.
District of Hesse.
24 November, 1791.

P. G. and
Toussaint Chéné
vs.
Pat McNiff.

Mr. Roe for plaintiffs appears and filed report of experts appointed by rule of last Court day marked with rule and return of service upon defendant annexed. Cause continued for 8 days.

John Askin
vs.
Etienne Latour,
dit Bellar.

Sheriff returns writ of fi. fa. issued with the moneys levied, whereupon it is ordered on motion of plaintiff filed and marked that the Sheriff do pay over to the plaintiff the said moneys in satisfaction of his judgment.

UNDER TEN
POUNDS.

John Laughton
vs.
Harry Facer.

Judgment for the sum of eight pounds fifteen shillings, Halifax currency, with costs.

Issued execution 16th December. Returnable in two months.

| | |
|---------------|---------|
| Debt | £8 15 0 |
| Costs | 0 10 5 |
| | <hr/> |
| | £9 5 5 |
| Writ | 0 1 0 |
| Bailiff | 0 - 4 0 |

WILLIAM DUMMER POWELL,
J. C. P.

Court adjourned to 1st December, 1791.

CHAS. SMYTH, *Clerk.*

Province of
Quebec.
District of Hesse.
1 December, 1791.

COURT OF COMMON PLEAS, holden at L'Assomption, in the said District on Thursday, the 1st day of December, 1791.

Present: The Honourable Wm. Dummer Powell, Esquire, first Judge of said Court.

Gervais Hodiesne
vs.
Jean Louis
Lajeunesse.

Mr. Roe, of counsel for plaintiff, filed declaration. Defendant appears in person, and says that he is not indebted in manner and form, inasmuch as he hath made divers payments to plaintiff on account of his said note, and prays that the same may be enquired of by the Court, and the plaintiff does so likewise. Cause continued for trial on next Court day.

James Abbott
vs.
J. Bte. Campeau.

Sheriff returned writ of fi. fa issued in this cause with the moneys levied, whereupon it is ordered, on motion of Mr. Roe, that the same be paid over to plaintiff in satisfaction of his said execution.

Sheriff returned writ of fi. fa issued in this cause, with the moneys levied, whereupon it is ordered, on motion of Mr. Roe, that the same be paid over to the plaintiff in part satisfaction of his judgment.

Robert Gowie
vs.
J. Bte. Marsack.

Sheriff returned writ of fi. fa issued in this cause, with the opposition of Joseph Thibault to the payment of moneys levied and now returned into Court annexed, whereupon it is ordered on motion of Mr. Roe, of counsel for opponent, that Guillaume St. Bernard do shew cause in eight days why the conclusions of the said opposition should not be granted.

Guillaume St. Bernard
vs.
J. Roucoute.

Mr. Roe, of counsel for plaintiffs, states to the Court that the eight days allowed by the ordinance for the homologation of the report of the experts, filed last Court day, being expired, prays the judgment of the Court, whereupon the Court further continues the cause en délibéré.

P. G. and
Toussaint Chéne.
vs.
Pat. McNiff.

Mr. Roe, for plaintiffs, appears and prays the judgment of the Court. Continued by the Court en délibéré.

Meldrum & Park
vs.
Thomas Smith.

Mr. Roe appeared for the defendant. Cause continued to next adjournment.

P. Durand
vs.
John Lipps.

Sheriff returned moneys levied by virtue of execution issued in this cause, whereupon it is ordered by the Court that the same be paid over to plaintiff in part satisfaction of his judgment.

Meldrum & Park
vs.
Louis Campeau.

Court adjourned to the 8th inst.

CHAS. SMYTH, *Clerk.*

WM. DUMMER POWELL, *J.C.P.*

COURT OF COMMON PLEAS, holden at L'Assomption on Thursday, the 8th day of December, 1791, according to adjournment.

Province of
Quebec.
District of Hesse.
8 December, 1791.

Present: The Honourable Wm. Dummer Powell, Esquire, first Judge of said Court.

Mr. Roe, for plaintiff, filed Exhibit A. Defendant in person appeared, but failing to produce the proof as by order of last Court, as was directed, the Court considers that the plaintiff do recover from the defendant the sum of sixteen pounds four shillings and twopence currency, as by his declaration it is prayed, with costs of suit.

Gervais Hodiesne
vs.
Jean Louis
Lajeunesse.

Issued fi. fa 15th November, '92. Ret. 1st Court in June next.

| | |
|---------------|----------|
| Debt | £16 4 2 |
| Costs | 6 8 2 |
| | <hr/> |
| | £22 12 4 |
| Writ | 5 |

with interest from 24th Nov. last.

C. SMYTH, *Clerk.*

Guillaume
St. Bernard
vs.
J. Roucoute, on the
opposition of
Joseph Thibault.

Mr. Roe, for opponent, filed rule of last Court day, with return of service on plaintiff, who not appearing, the Court examined the titles on which the judgments were rendered, and not seeing any priority of mortgage, on motion of Mr. Roe, it is ordered that the moneys levied by the Sheriff be distributed as follows:—

G. St. Bernard
vs.
J. Roucoute.

| | |
|--|-----------|
| Amount levied by Sheriff | £28 19 10 |
| Amount of costs included in execution | £5 6 6 |

Jos. Thibault
vs.
J. Roucoute.

| | |
|---|----------|
| Amount of costs taxed | 8 19 0 |
| To costs on distribution to opponent | 3 5 6 |
| | <hr/> |
| | 17 11 0 |
| | <hr/> |
| | £11 8 10 |

| | |
|--|----------|
| G. St. Bernard's demand.. | £52 15 0 |
| Int. thereon from 19th May, '91, to 8th Decem- ber following | 1 16 4 |
| | <hr/> |
| | £54 11 4 |

| | |
|-----------------------|---------|
| Proportion is | £5 4 4½ |
|-----------------------|---------|

| | |
|--|----------|
| Jos. Thibault's demand .. | £62 10 0 |
| Int. thereon from 10th May, '91, to 8th Dec. .. | 2 3 9½ |
| | <hr/> |
| | £65 1 9½ |

| | |
|-----------------------|----------|
| Proportion is | £6 4 5½ |
| | <hr/> |
| | £11 8 10 |

Meldrum & Park
vs.
Paul Campeau
and wife on the
opposition of
Madame Campeau.

Mr. Roe appeared for plaintiff and stated that on the 26th day of May last this honourable Court were pleased to order "that the Sheriff proceed to the sale of the premises subject to the demand of the minor children of

Guillaume La Forest and Genevieve Fovelle de Bigras to the amount of two thousand six hundred and thirty-five livres, upon suggestion of Mr. Roe, for plaintiff, that an indefinite number of minor claimants stated in the Sheriff's notification of sale would materially affect the value of the land, and praying that a further day may be given to the plaintiff to ascertain the ages of the children of the said Genevieve Bigras and Guillaume Laforest." He accordingly now produces extracts from the registers of baptism of the Parishes of St. Anne and L'Assomption, certified by Messrs. Frichette and Dufaux, whereby it appears that Prosper and Alexis Laforest are still minors, whereupon the Court orders that the Sheriff do proceed to the sale of the premises seized, subject to the claim of the said minors being one thousand three hundred and seventeen livres ten sols.

The summons in this cause being returned by the Sheriff duly served and the declaration filed, the defendant was thrice called and not appearing, out of his default is granted to the plaintiff. He being an officer of the Court, the record is thus made and listed by

WM. DUMMER POWELL, *First Judge C.P.*

Mr. Roe, of counsel for plaintiff, appears and prays the judgment of the Court, whereupon the Court having maturely weighed and examined the declaration, plea, answers, and several exhibits filed by the parties respectively in this cause, it is considered that the plaintiffs do recover from the defendant, become incidentally plaintiff, the sum of fifty-five pounds two shillings and sevenpence halfpenny, New York currency, being thirty-four pounds nine shillings and one penny halfpenny currency of the province, with costs of suit, reserving nevertheless to the said incidental plaintiff such recourse as he may think proper to recover of the plaintiffs the several items of his account filed, except such as are to his credit in the account filed by plaintiffs, and the further sum of six pounds five shillings allowed by the Court to be ample compensation for his time and labour in transcribing a Book of Account as admitted by plaintiffs, and therefore deducted from their demand.

Although this cause is not of a nature subject to the ordinance which requires from the Court below assignment of the grounds of its judgment, yet for the information of the parties it is stated that by the laws of France as well as England compensation is admitted on the claim of the incidental plaintiff, as well as on a plea of set off, but the matter compensated must be of a nature as clear as the

Chas. Smyth, Esq.,
vs.
William Groesbeck.

Meldrum & Park
vs.
Thos. Smith.

demand. Thus against a debt by account not liquidated compensation is admitted for moneys laid out and expended for labour done and performed and generally for such clearly established as in conscience the plaintiff ought not to withhold payment of, but such objects of compensation must be clear, obvious and proved, not to arise out of remote causes of litigation, for satisfaction of which the party must have recourse to his specific action as afforded by the law and custom.

In the present instance no part of the defendant's account is of this nature to be compensated, but the items admitted in the plaintiff's account or subtracted from the balance by the judgment of the Court—all the other objects involve matter foreign to this action of debt, and as to them the incidental plaintiff, not having adduced the legal proofs in a legal manner, is considered as non-suited and left to his proper action or actions.

P. G. and
Toussaint Chéne
vs.
Pat McNiff.

Plaintiffs fyled
return of judgment,
with defendant's refusal
to comply therewith.
31st December, '91.
C.S.

Mr. Roe, for plaintiffs, appears and prays judgment, whereupon the Court having maturely weighed the declaration, plea and answer, as well as the testimony adduced and exhibits filed in this cause, it is considered that the plaintiffs do recover of the defendant the sum of sixty-two pounds ten shillings currency with costs of suit, unless within fourteen days the defendant shall at the requisition of the plaintiffs deliver to them one hundred and eighty bushels of wheat, the produce of the seed sowed by the plaintiffs on the land leased by the defendant from Arthur McCormick.

Issued Execution on 31st December, '91. Ret. first Court in June, 1792.

| | |
|-------------------------|----------|
| Debt | £62 10 0 |
| Costs | 17 18 0 |
| | <hr/> |
| | £80 8 0 |
| Writ | 5 0 |
| Interest on £62 10 from | |

C.S.

W. D. POWELL, J.C.P.

Court adjourned to the 15th December, '91.

C. SMYTH, Clerk.

Province of
Quebec.
District of Hesse.
15 December, 1791.

COURT OF COMMON PLEAS, holden at L'Assomption, on Thursday, the 15th day of December, 1791, according to adjournment.

Mr. Smyth prays that the defence of the defendant, who does not appear upon being thrice called, may be recorded, and for his profit thereof that on Thursday next he be permitted to prove by witnesses his demand. Ordered, that this cause be tried on Thursday next.

W. D. POWELL, *J.C.P.*

Smyth
vs.
Groesbeck.

Parties appeared. Defendant states to the Court that he acknowledges the plaintiff's mare broke her leg on a bridge within his parish, and that at the time the accident happened he told the plaintiff not to touch the mare and that he would see him paid, but this promise was made in consideration that as sous voyer he could oblige the parties who were concerned in keeping the said bridge in good order to reimburse the price, and that it would be an hardship for him to sustain the damage complained of until the principals were prosecuted.

Cause continued.

Court adjourned to 22nd December, 1791.

CHAS. SMYTH, *Clerk.*

WM. DUMMER POWELL, *J.C.P.*

COURT OF COMMON PLEAS, holden at L'Assomption, on Thursday, the 22nd day of December, 1791, according to adjournment.

Province of
Quebec.
District of Hesse.
22 December, 1791.

Present: The Honourable William Dummer Powell, Esq., first Judge of said Court.

On prayer of plaintiff, Clerk of the Court, this cause is continued for return of subpoena, the state of the river preventing the officer from making his return.

Chas. Smyth
vs.
Wm. Groesbeck.

W. DUMMER POWELL, *J.C.P.*

Parties appeared. Defendant acknowledges that the bridge in question was in bad repair and the plaintiff's mare broke her leg in consequence. Whereupon the Court considers that the plaintiff recover from the defendant the sum of twelve pounds with costs.

MEMO.—It appears that it is possible the Court misunderstood the report of the value of the mare, mistaking Halifax for New York currency.

W. D. P.

Dismissed.

André Peltier
vs.
Pierre Reaume,
et. Thimus et
Jos. Bartiaume.

André Peltier
vs.
Alexis Maison-
ville.

Jean Tournû dit
Jeannet et Antoine
Meloche Marquill-
liers d'L'Assomp-
tion

vs.
Etienne Meloche.

Parties appeared. Judgment for the sum of eighteen shillings et fourpence currency with costs upon confession of defendant.

Court adjourned to 26th January, 1792.

CHAS. SMYTH, *Clerk.*

WM. DUMMER POWELL, *J.C.P.*

Province of
Quebec.
District of Hesse.
26 January, 1792.

COURT OF COMMON PLEAS, holden at L'Assomption for the said District, on Thursday, the 26th day of January, 1792, according to adjournment.

Present: The Honourable William Dummer Powell, Esq., first Judge of said Court.

Court met and adjourned to the 22nd day of March next, to which time all proceedings and causes in Court are continued.

CHAS. SMYTH, *Clerk.*

W. DUMMER POWELL, *J.C.P.*

NOTE.—The minutes of the Court from the 22nd day of March, 1792, until the 21st of August, 1792, are missing.

Province of Upper
Canada.
District of Hesse.
21 August, 1792.

COURT OF COMMON PLEAS, holden at L'Assomption, on Tuesday, the 21st day of August, 1792.

Present: The Honourable William Dummer Powell, Esquire, first Judge of the said Court.

UNDER TEN
POUNDS
STERLING.
William and David
Robertson,
of Detroit,
Merchants and
Co-partners,
vs.
Frederick Arnold.

Mr. Roe, Attorney for plaintiffs, appeared. Defendant appeared in person. By the Court. Judgment for the sum of three pounds, fifteen shillings and twopence, Halifax, as by Dec'r.

David Robertson,
Attorney to
Thos. McCrae.
vs.
Wm. Searl.

Mr. Roe, for plaintiff, appeared and prayed that the cause be continued. Ordered.

Mr. Roe for plaintiff.

William Robertson
vs.
John Clearwater.

Defendant appeared in person and acknowledged the debt as stated in the declaration. Judgment for four pounds twelve shillings and tenpence Halifax.

David Robertson,
Attorney to
Thos. McCrae,
vs.
Edward McCarty.

Defendant made default, being called three times. Mr. Roe, for plaintiff, moves the Court to continue this cause ten days. Ordered accordingly.

Defendant being called three times made default. Mr. Roe appeared and moved that this cause be continued to the 23rd inst. Ordered accordingly.

David Robertson,
Attorney to
Thos. McCrae,
vs.
William Munger.

Defendant being called three times made default. Mr. Roe, for plaintiff, moved that this cause also stand continued to the 23rd inst. Ordered accordingly.

The same
vs.
Samuel Hall.

Defendant being called three times did not appear. Default. Mr. Roe, for plaintiff, moves the continuation of this cause until the 23rd inst. Ordered.

The same
vs.
Luke Killing.

Defendant, called thrice, did not appear. Default. On motion of Mr. Roe, Attorney for plaintiffs, this cause was continued.

William and
David Robertson
vs.
William Searl.

Defendant, thrice called, did not appear. Default. On motion of Mr. Roe, this cause was continued to the 23rd inst.

David Robertson,
Attorney to
Thos. McCrae,
vs.
Wm. Monforton.

Mr. Roe appeared for plaintiff.

Defendant appeared in person and made tender of the sum demanded, without costs, and alleged that he was always ready to pay the sum, but that it was never demanded, nor did he know where his note was.

David Robertson,
Attorney to
Thos. McCrae,
vs.
Frederick Arnold.

BY THE COURT. Judgment for the same, five pounds nineteen shillings and four-and-a-half pence, Halifax, without costs.

Mr. Roe for plaintiff.

Judgment for the sum of two pounds three shillings and ninepence, on confession of defendant, with the costs.

The same
vs.
Jno. Clearwater.

Defendant, being called three times, made default. On motion of Mr. Roe, this cause was continued to the 23rd inst.

The same
vs.
Ebenezer Loveless.

Mr. Roe for plaintiff. Judgment for the sum of one pounds seven shillings and sixpence, Halifax, on confession of defendant with costs.

Sarah Ainse
vs.
Jno. Clearwater.

The following causes, no returns being made upon the writ of summons, it is ordered, on motion of Mr. Roe for plaintiffs, that the returns of the several writs be extended to Saturday, the 25th inst.

William and
David Robertson
vs.
Ignace Tuot, dit
Duval, defendant.

The Same vs. J. B. Parré, defendant.
 The Same vs. Julien Tavernier.
 The Same vs. Pierre L'Hyvernois.
 Wm. Robertson vs. Louis Bourdeginon.
 William Robertson vs. Francois Billiet.
 David Robertson vs. Harry Facer.
 The Same vs. G. Hodiesne.
 The Same vs. Joseph Roe.
 Wm. Christie, plaintiff, vs. Pierre Cerá dt. Coquillard.
 Sarah Aisne vs. Fran. Latour.
 The Same vs. Jordan Avery.
 Sarah Ainse vs. J. Bpte. Campeau.
 James McDonell vs. Alexis Cerá dt. Coquillard.
 James McDonell vs. John Miller.

Court adjourned to to-morrow.

CHAS. SMYTH, *Clerk.*

Province of Upper
 Canada.
 District of Hesse.
 22 August, 1791.

COURT OF COMMON PLEAS, holden at L'Assomption,
 on Wednesday, the 22nd day of August, according to
 adjournment.

Present: The Honourable Wm. Dummer Powell,
 Esquire, First Judge.

William and David
 Robertson, of Detroit,
 Merchants and
 Co-partners,
 plaintiffs,
 vs.
 Isidore Chene, of
 the same place,
 Gentleman,
 defendant.

Mr. Roe, for plaintiffs, appeared and filed declaration.
 Defendant being thrice called and not appearing, on
 motion of Mr. Roe a default is recorded against
 defendant.

Peter Clark, late
 of Detroit, but
 now of Kingston,
 Esq., plaintiff,
 vs.
 Jean Bte.
 Campeau, of Gross
 Point, Gentleman,
 defendant.

Mr. Roe for plaintiffs appeared and filed declaration.
 Defendant being thrice called and not appearing, de-
 fault is recorded against defendant on motion of Mr. Roe.

Court adjourned till to-morrow at 11 o'clock.

CHAS. SMYTH, *Clerk.*

Province of Upper
 Canada.
 District of Hesse.
 23 August, 1792.

COURT OF COMMON PLEAS, holden at L'Assomption,
 on Wednesday, the 23rd day of August, 1792, according to
 adjournment.

Present: The Honourable William Dummer Powell,
 Esquire, First Judge.

Chas. Bellair
 vs.
 Andre Derome dit
 Decarreux.

No Return. Dismissed.

David Robertson,
 Attorney,
 vs.
 William Munger.

Judgment for the sum of one pound ten shillings and
 elevenpence halfpenny, Halifax currency, with costs.

Judgment for the sum of fifteen shillings, Halifax, on confession of defendant, with costs.

David Robertson,
Attorney,
vs.
Samuel Hall.

Samuel Hall being sworn to declare the truth in this cause says that the defendant delivered him the copy of the summons now filed in Court, and acknowledged the debt demanded and desired this witness to appear in Court and confess judgment.

Same plaintiff
vs.
Luke Killing,
defendant.

Judgment for the sum of £2 10s. 11d., Halifax currency, with costs.

Defendant did not appear.

Plaintiff filed defendant's two notes, which were proved by the testimony of Wm. Duggan.

The same
vs.
William
Monforton.

Judgment for the sum of eight pounds nine shillings and twopence, with costs.

Judgment for the sum of five pounds six shillings, Halifax currency, with costs, on testimony of Henry Botsford.

The same
vs.
Ebenezer Loveless.

W. DUMMER POWELL, *J.C.P.*

Court adjourned, to-morrow at 11 o'clock.

CHAS. SMYTH, *Clerk.*

COURT OF COMMON PLEAS, holden at L'Assomption, on Friday, the 24th day of August, 1792, pursuant to adjournment.

District of Hesse.
24 August, 1792.

Present: The Honourable William Dummer Powell, Esquire, First Judge.

Court adjourned until to-morrow at eleven o'clock, there being no business before the Court for this day.

CHAS. SMYTH, *Clerk.*

WM. DUMMER POWELL, *J.C.P.*

COURT OF COMMON PLEAS, holden at L'Assomption, on Saturday, the 25th day of August, pursuant to adjournment.

Province of Upper
Canada.
District of Hesse.
25 August, 1792.

Present: The Honourable William Dummer Powell, Esquire, First Judge.

Defendant, being thrice called and not appearing, default.

CAUSES UNDER
TEN POUNDS
STERLING.

Plaintiff appeared in person, and being sworn to testify the truth says that the amount now produced and filed in Court is just and true.

Wm. Hands
vs.
J. Bpt. Laberdy.

Whereupon the Court considers that the defendant pay to the plaintiff the said sum of one pound five shillings, with costs of suit, as by declaration. It is demanded.

John Askin, Jun.,
 plaintiff,
 vs.
 J. Bpte. San-
 crainte.

Mr. Roe, attorney for plaintiff, appeared and filed declaration.

Defendant being thrice called and not appearing, Mr. Roe moves for default. Ordered.

Schieffelin &
 Askin,
 plaintiffs,
 vs.
 J. Bte. San-
 crainte,
 defendant.

Mr. Roe, attorney for the plaintiffs, filed declaration. Defendant being thrice called and not appearing, on motion of Mr. Roe default is ordered against the defendant.

Wm. Monforton
 vs.
 Jos. Pernier.

Defendant appeared in person and for cause why he should not be condemned to pay the sum of the note, now filed, says that he is a layman and unlettered, that when he made his mark to the said promissory note it was not read or explained to him, and that he had no value for the same. Defendant replies that the said note was read and explained to him in presence of the subscribing witness, and that there is evidence thereof by the payments endorsed on the said note, which payment the defendant acknowledges. Cause continued en délibéré.

Wm. Monforton,
 plaintiff,
 vs.
 Fran. LePine,
 dt Berar.

Defendant appeared in person, and being duly sworn to testify the truth says that he never received sums but at two different times from the plaintiff and acknowledged in part the plaintiff's account. Court considered that he be condemned to pay the sum of fifty-four livres five sols, with costs of suit.

The same plaintiff
 vs.
 J. Bte. Fagnon,
 defendant.

Continued on consent of plaintiff until next adjournment, the plaintiff being lame and unable to attend the Court.

James McDonell,
 plaintiff,
 vs.
 John Miller,
 defendant.

Defendant being thrice called and not appearing, default.

Mr. Roe, for plaintiff, produced a witness in this cause, who being duly sworn to declare the truth says he was present when plaintiff presented the account now filed, who paid him something on account and promised to pay the balance at a future time. Judgment for the sum of £2 4s. 11d. with costs.

The same
 vs.
 Alexis Cera dt.
 Coquillard,
 defendant.

Hugh Heward, being sworn to declare the truth in this cause, says that the defendant acknowledged the debt and at the same time delivered him copy of the summons authorising him to appear in Court and confess judgment.

Judgment for the sum of four pounds thirteen shillings and three halfpence, Halifax, with costs.

Defendant thrice called but did not appear.

Mr. Roe, for the plaintiff, filed promissory note and produced Wm. Duggan, who being duly sworn says he saw the defendant make his mark to the said note after it was read to him.

Sarah Ainse,
plaintiff,
vs.
Fran. Latour,
defendant.

Judgment for the sum of one pound seventeen shillings and sixpence, Halifax, with costs.

Defendant, thrice called, did not appear.

Mr. Roe, for plaintiff, filed promissory note and produced William Duggan, who being duly sworn says he was present and saw the defendant subscribe his name to the said note. Judgment for two pounds eighteen shillings and fourpence, Halifax, with costs.

The same plaintiff
vs.
Jordan Avery.

Defendant, thrice called, did not appear.

Mr. Roe filed defendant's promissory note and produced William Duggan, who being sworn, says he was present and saw the defendant subscribe his name to the said note.

The same plaintiff
vs.
J. Bte. Campeau.

Judgment for two pounds nineteen shillings and ninepence, Halifax, with costs.

Pd. Execution 13th August, 1793, note two months.

| | |
|---------------|---------|
| Debt | £2 19 9 |
| Costs | 1 9 |
| Writ | 1 0 |
| | <hr/> |
| | £4 1 6 |
| Bailiff | 4 0 |

Defendant being called and not appearing. Default.

Mr. Roe produced Wm. Duggan, who being duly sworn, says that the defendant acknowledged the debt demanded in his presence to be due for three quarters rent of a house from Mr. McCrae.

David Robertson,
Attorney to
Thos. McCrae,
plaintiff,
vs.
Jos. Roe,
defendant.

Judgment for the sum of nine pounds seven shillings and sixpence, Halifax, with costs.

Defendant being called and not appearing. Default.

Mr. Roe, for plaintiffs, produced Charles Moran, who being duly sworn declares that he was present and saw the defendant subscribe his mark to his promissory note now filed after it was read and explained.

Wm. and David
Robertson
vs.
Ignace Tuat,
dt. Duval.

Judgment for the sum of three pounds seventeen shillings and sixpence, Halifax, with costs, including five shillings for the witness.

Wm. and David
Robertson
vs.
J. Bte. Parré,
defendant.

Defendant appears in person and acknowledged the sum demanded by the declaration.

Judgment for the sum of four pounds eight shillings and ninepence, with costs, including five shillings to witness who was present in Court on subpœna.

David Robertson,
Attorney to
Thos. McCrae,
plaintiff,
vs.
Gervais Hodiesne,
defendant.

Defendant appeared in person.

Judgment on confession of defendant for the sum of three pounds seven shillings and ninepence, Halifax, with costs, including five shillings to a witness who was present in Court on subpœna.

Wm. Robertson,
plaintiff,
vs.
Louis Bour-
deginon.

Judgment on confession of defendant for the sum of four pounds and twopence halfpenny, Halifax, with costs.

The same plaintiff
vs.
Fran. Billiet,
defendant.

Judgment on confession of defendant for the sum of two pounds six shillings and eightpence halfpenny, with costs of suit.

Wm. Christie,
plaintiff,
vs.
Pierre Cera dt.
Coquillard.

Defendant appeared in person and acknowledged the promissory note now filed, but pleads a set-off against the said note of nine pounds thirteen shillings and ninepence, Halifax, not endorsed thereon.

Cause continued until next adjournment.

Wm. and David
Robertson
vs.
Julien Tavernois.

Mr. Heward appeared, and being sworn to testify the truth says that the defendant acknowledged the demand to be just and true in his presence.

Judgment for the sum of eight shillings and eightpence, Halifax, with costs.

David Robertson,
Attorney to
Thos. McCrae,
plaintiff,
vs.
Harry Facer,
defendant.

Defendant being thrice called and not appearing.
Default.

Mr. Roe for plaintiff produced William Duggan, who being duly sworn to testify the truth in this cause, declares that the name of Harry Facer, subscribed to a promissory note now filed in Court, is to the best of his knowledge and belief the proper handwriting of the said Harry Facer, that he is acquainted with the handwriting of Wm. Patterson, and that the subscription "Wm. Patterson," as witness to the said note is of the proper handwriting of the said witness, and that he is out of the jurisdiction of this Court.

Judgment for the sum of three pounds three shillings and fivepence, Halifax, with costs of suit.

Court adjourned until Monday next at 11 o'clock.

CHAS. SMYTH, *Clerk*.

WM. DUMMER POWELL, *J.C.P.*

COURT OF COMMON PLEAS, holden at L'Assomption, this Monday, twenty-seventh of August, 1792, pursuing to adjournment.

District of Hesse.
27 August, 1792.

Present: William Dummer Powell, Esquire, First Judge of the said Court.

William Monforton, Gentleman, in the absence of Charles Smyth, the Clerk of the said Court, being sworn fourth of July to perform the duty of Clerk député for this term before

WM. DUMMER POWELL, *J.C.P.*

Mr. Roe, for the plaintiff, filed declaration, and the defendant being thrice called and not appearing, default was rendered against him.

William Macomb
vs.
William Grosbeck.

Mr. Roe, for the plaintiff, filed declaration, and the defendant appears in his proper person.

James May
vs.
John Williams.
J.C.M.

The declaration being read, the defendant for answer pleads verbally that about the time mentioned in the said declaration he, the defendant, being commanded by a superior officer, himself being a mate of one of his Majesty's vessels at Detroit, to receive an anker said to be the King's, which Mr. Thomas Reynolds, assistant commissary at Detroit, would show to him, he, the defendant, with the party of seamen went to a courtyard in Detroit which he since learned belonged to Mr. May's house, and that from thence he took away an iron anker as described in the said declaration. The said Thomas Reynolds pointed out to the defendant as the anker he was sent for, that there was no opposition made to his taking the anker, which the defendant carried to the King's yard, where he left it in charge of naval store-keeper.

The Court ordered the plaintiff to prove his damages on Wednesday next.

The defendant being thrice called and not appearing to sustain the set-off pleaded on admission of his note for balance of which this suit was brought, it is considered by the Court that the defendant pay to the plaintiff the sum of nine pounds one and tenpence, New York currency, equal to five pounds thirteen shillings and sevenpence, one halfpenny currency of the Province, with costs.

William Christy
vs.
Pierre Cera de
Coquillard.

Paid ex. 13th August, 1793.

| | |
|-------------|----------|
| Debt | £5 13 7½ |
| Costs | 15 8 |
| Ex'n. | 1 0 |

£6 10 3½

Bailiff 4 0

Note in two months.

Pierre Chene
vs.
Patrick McNiff.

The defendant being thrice called and not appearing his default is recorded, and it is ordered that this cause come on to be heard on Wednesday next.

Toussain Chene
vs.
Patrick McNiff.

The defendant being thrice called and not appearing, his default his recorded, and it is ordered that this cause come on to be heard on Wednesday next.

William Hands
vs.
John Bte.
Campeau.

Mr. Roe, for the plaintiff, filed sheriff's return of nulla bona on writ of fieri facias issued the twentieth day of October last, and prays that inasmuch as the defendant has property within the said Sheriff's jurisdiction that a writ and alias of fieri facias be awarded against him. The Court ordered the same accordingly.

Issued al.f.fa. 16th July, 1793. Note in six months.

| | |
|-------------|----------|
| Debt | £20 5 10 |
| Costs | 6 8 2 |

£26 14 0

Sub-costs 13 6

Writ 5 0

with interest on £20 5s. 10d. from 5th of April, 1786, until paid.

CHAS. SMYTH.

Adjourned to to-morrow at 11 o'clock before noon.

WILLIAM MONFORTON, *Acting Clerk.*

WILLIAM DUMMER POWELL, *J.C.P.*

District of Hesse.
28 August, 1792.

COURT OF COMMON PLEAS, held at L'Assomption, in the District of Hesse, this twenty-eighth day of August, according to the adjournment.

Present: William Dummer Powell, Esquire, First Judge.

The Court stands adjourned until to-morrow, the twenty-ninth instant, at 11 o'clock before noon.

WM. DUMMER POWELL, *J.C.P.*

District of Hesse.
29 August, 1792.

COURT OF COMMON PLEAS, held at L'Assomption, this Wednesday, twenty-ninth of August, 1792, pursuing to adjournment.

Present: William Dummer Powell, first Judge of the said Court.

Continued at the prayer of the plaintiff until to-morrow upon the suggestion that the witnesses could not cross the river.

William and David
Robertson
vs.
Isidore Chene.

James May
vs.
John Williams.

Peter Clerk
vs.
John Bte.
Campeau.

Sworn in Court.
W.D.P.

Continued for the same reason until to-morrow.

Mr. Wm. Monforton being duly sworn declared that he saw the defendant subscribe the bond and obligation now filed in this cause bearing date the 16th Sept., 1786.

WILLIAM MONFORTON.

Judgment for the sum of nineteen pounds eleven shillings and one penny, Halifax currency, with the interest on the principal sum of twenty-one pounds thirteen shillings, New York currency, from the twentieth of August until paid, and cost of suit.

Continued by consent of the parties until to-morrow.

Toussaint Chene
vs.
Patrick McNiff.

Continued by consent of the parties until to-morrow.

Pierre Chene
vs.
Patrick McNiff.

WILLIAM MONFORTON, *Acting Clerk.*

WILLIAM DUMMER POWELL.

COURT OF COMMON PLEAS, holding at L'Assomption, this Tuesday, thirtieth day of August, 1792.

District of Hesse.
30 August, 1792.

Present: William Dummer Powell, first Judge of the said Court.

In the absence of Charles Smyth, Clerk, occasioned by indisposition, William Monforton, gentleman, was sworn faithfully to perform the function of Clerk Deputy for this term.

W.D.P., *F.J.C.P.*

Judgment for the sum of eleven pounds eight shillings and tenpence with costs.

Issued fi.-fa. 15th Nov., '92. Ret. 1st Court in June next.

William and David
Robertson
vs.
Isidore Chene.

| | |
|-------------|----------|
| Debt | £11 8 10 |
| Costs | 6 12 6 |

£18 1 2

| | |
|------------|-----|
| Writ | 5 0 |
|------------|-----|

With interest from 20th August, '92.

C. SMYTH, *Clerk.*

James May
vs
John Williams

Francois Golin ayant preté serment dit que dans le mois d'avril, 1791, etant au service de Mr. James May il aidé a tirer de la rivière un ancre pesant à peu près au mieux de sa connaissance trois cent trente Livres qu'il a aidé à placer dans la cour de Mr. May d'où il a été tiré par le défendeur a ce qu'il a oui dire a son bourgeois que dans ce temps la le demandeur n'y avoit pas d'autre ancre.

sa
Francois X Golin.
marque.

Hugh Heward being sworn says he has knowledge that the usual price of iron wrott into ankor is at Detroit four shillings York currency per pound, and that he has knowledge that in cases where ankors are lent it is being usual stipulate for payment of three shillings per pound if lost or not returned.

HUGH HEWARD.

Issued f.i.f.a. 15th March, '93, ret. first Court in Sept. next.

| | | | |
|---------------------------|-------|---|---|
| Debt | £20 | 0 | 0 |
| Costs | 6 | 8 | 2 |
| | <hr/> | | |
| | £26 | 8 | 2 |
| Writ | 5 | 0 | |
| Int. from 30th Aug. last. | | | |

C. SMYTH.

This action is in the nature of an action of trespass in the English jurisprudence, with this difference, that in that action damages only are recovered. In this the laws of Quebec admit the alternative on one suit. Both cover equity and resist the pretention of any subject to become a judge in his own house. The laws of Quebec, founded on those of Rome, resist such an idea so strongly that the question of right cannot be heard until the voye le fait act of the party or natural trespass be fully repaired, by putting things *in statu quo* or subjecting the defendant to proportionate fine *ne vi juris quo natu quum de jure Domini sine possessionis*, and the thing is not exempt from this rule in the present instance. The fact is admitted the right of property and possession is not traversed. The Court has nothing to do but pronounce the judgment of law, which if the plaintiff had so required would be simply the restoration of the anker to the place it was taken from, but as the pleadings stand the Court considers that the defendant do in fourteen days restore the anker to the plain-

tiff, or, failing so to do, do pay to the plaintiff his damage to the amount of twenty pounds, Halifax currency, with the costs.

Judgment for four pounds five shillings and sixpence, New York Currency, with costs.

Toussaint Chene
vs.
Patrick McNiff.

Judgment for three pounds fifteen shillings and sixpence, Halifax currency, with costs.

Pierre Chene
vs.
Patrick McNiff.

WILLIAM MONFORTON, *Acting Clerk.*

WM. DUMMER POWELL, *J.C.P.*

COURT OF COMMON PLEAS, holden at L'Assomption, for this District, District of Hesse, this thirteenth day of August, by adjournment.

District of Hesse.
30 August, 1792.

Present: William Dummer Powell, first Judge.

William Monforton swore faithfully to perform the functions of Clerk député in the absence of Charles Smyth, indisposed.

W. D. P.

COURT OF COMMON PLEAS, holden at L'Assomption, this Friday, 31st day of August, 1792.

District of Hesse.
31 August, 1792.

Present: William Dummer Powell, first Judge of the said Court.

The parties appearing, the cause is continued by consent.

James Turner
vs.
James May.

WILLIAM MONFORTON, *Acting Clerk.*

The Court having received the testimony of Joseph Pouget as to the subscription of the note which proves the agent of the defendant, the Court considers that the plaintiff do recover of the defendant the sum of ten pounds, Quebec currency, with costs of suit.

Wm. Monforton,
plaintiff,
vs.
Jean Bpte.
Faineaul,
defendant.

Judgment on his note confessed for nine pounds seven shillings and eightpence, currency of the Province, with costs.

William
Monforton
vs.
Joseph Perrier dit
Vadboncouer.

W. D. POWELL.

Adjourned to Saturday, 11 o'clock.

COURT OF COMMON PLEAS, holden this first of September.

District of Hesse.
1 September, 1792.

Present: William Dummer Powell, first Judge of the said Court.

William Monforton sworn faithfully to perform the functions of Clerk Député *pro Jure vice.*

W. D. P.

William and David
Robertson
vs.
Edward McCarty

Upon the note bearing date the twenty-first August, 1790, now filed and proved by William Duggan, the Court considers that the plaintiff do recover from the defendant the sum of two pounds eight shillings and one penny half-penny, Halifax currency, with costs.

John Askin,
Senior,
vs.
Jean Bpte.
Sanscrainte.

The defendant being called and not appearing, the plaintiff prays that his default may be recorded, and for his profit therein suggesting to the Court that the defendant was an Indian trader in the service of the plaintiff, and being by him intrusted with merchandise for traffic did convert to his own use sundry articles as per account filed, the several items of which the defendant acknowledged to the plaintiff at divers times and required of him to charge the amount thereof to his debit, by means whereof the plaintiff is utterly deprived of any legal testimony to entitle him to his just advantage from the default of the defendant to appear to answer this suit, but by referring his said demand to the decisive oath of the defendant agreeable to the law and usage of the custom of Paris, prays that a writ be made on the defendant to appear in his proper person before this Court on Tuesday, the fourth inst., at nine of the clock before noon, to purge himself by his decisive oath from the demand of the plaintiff, failing which the said account filed shall be taken and held to be confessed and acknowledged.

Court granted and ordered that the same be served on the person of defendant.

Shieffeling and
Askin
vs.
Jean Bpte. Sans-
crainte.

The defendant, being thrice called and not appearing, the plaintiffs pray his default may be recorded and for their profit, therein suggesting to the Court that the defendant was an Indian trader in the service of the plaintiffs, and being by them intrusted with merchandise for traffic, did convert to his own use sundry articles as per account filed, the several items of which the defendant acknowledged to the plaintiffs at divers times and required of them to charge the amount thereof to his debit, by means whereof the plaintiffs are utterly deprived of any legal testimony to entitle them to their just advantage from the default of the defendant to appear to answer this suit, but by referring their said demand to the decisive oath of the defendant agreeable to the law and usage of the custom of Paris, pray that a writ be made on the defendant to appear in his proper person before this Court, Tuesday, the fourth inst., at nine of the clock before noon, to purge himself by his decisive oath from the demand of the plaintiffs, failing which the said account filed shall be taken and held to be confessed and acknowledged.

Court grant and order that the same be served on the person of the defendant.

Adjourned to 3rd day of September.

WILLIAM MONFORTON, *Acting Clerk.*

COURT OF COMMON PLEAS, held at L'Assomption, in this District, this third day of September, 1792.

Present: William Dummer Powell, first Judge of said Court.

District of Hesse.
3 September, 1792.

Mr. Roe, for the plaintiff, filed return of fieri facias, the defendant being thrice called and not appearing, it is ordered that a verdict of fieri facias do issue for satisfaction, so being of record, together with the costs accruing on the present application.

George Leith and
William Thorn.

Action dismissed.

James Turner and
James May.

The defendant being thrice called and not appearing the default is recorded.

William Macomb
and William
Grossbeck.

Adjourned for to-morrow at nine of the clock.

COURT OF COMMON PLEAS, held at L'Assomption, in this District, this fourth day of September.

Present: William Dummer Powell, first Judge of said Court.

Province of
Québec.
District of Hesse.
4 September, 1792.

The defendant being thrice called and not appearing, agreeable to the return of the account now filed and proved to have been served upon him, this cause is continued to to-morrow.

Jonathan
Shieffeling and
John Askin, Jr.,
vs.
Jean Bte. Sans-
crainte.

WILLIAM MONFORTON, *Acting Clerk.*

The same rule.

John Askin,
Junior,
vs.
Jean Bte. Sans-
crainte.

Adjourned for to-morrow.

COURT OF COMMON PLEAS, held at L'Assomption, in this District, this 5th of September, 1792.

Present: William Dummer Powell, first Judge of said Court.

District of Hesse.
5 September, 1792.

Louis Géniez ayant prêté serment sur les St. Evangilles declare qu'il ce trouva dans la maison de Mr. Jean Askin avec le defendeur Jean Bapt. Sancrainte et Mr. Roe, e'avocas, qui presenta au dit Sancrainte deux comptes, avec les defendeur sexpliquant que cetoit les comptes de Mr.

John Askin,
Junior,
vs.
Jean Bte. Sans-
crainte.

Jean Askin et de la Société de Jean Askin et Shieffeling que Mr. Roe en presence du dit temoin en fit la lecture article par article et demanda au defendeur s'il y trouvoit quelque erreur il repondit que non excepté l'omission d'une meule qu'il disoit avoir fourni que la dessus Mr. Roe lui dit qu'il fallait passer de l'autre bord pour reconnaître les dits comptes devans la Cour ce que le def'dr. refusa disant pour raison pour quoi voules vous que j'y aille vu que je ne vie pas ce que je dois.

LOUIS GÉNIEZ.

Mr. Roe, being sworn, says that the account filed in Court upon which the declaration in this cause is grounded is the only account which the witness presented to the defendant from John Askin, Junior, in presence of Louis Genie.

W. ROE.

Judgment for the amount of twenty-eight pounds nineteen shillings and eightpence one halfpenny, Halifax currency, with costs.

Shieffeling and
Askin
vs.
Jean Bte. San-
crainte.

Louis Geniez ayant preté serment sur les Sts. Evangelles declare qu'il se trouva dans la maison de M. Jean Askin avec le defendeur Jean Bapt. Sancrainte et Mr. Roe e'avocat qui presenta au dit Jean B't. Sancrainte deux compts avec le defendeur sexpliquant que cetoit les compts de Mr. Jean Askin et de la société de Jean Askin et Shieffling que Mr. Roe en presence du dit temoin en fit la lecture article par article et demanda au defendeur s'il y trouvoit, quelque erreur il repondit que non excepté l'omission d'une meule qu'il disoit avoir fourni que la dessus Mr. Roe lui dit qu'il falloit passer de l'autre bord pour reconnaître les dits compts devant la cour ce que le def'dr. refuse disant pour raison pour quoi voulés vous que j'y aille vu que je ne nie pas Ce je dois.

LOUIS GÉNIEZ.

Mr. Roe, being sworn, says that the account filed in Court upon which the declaration in this cause is grounded is the only account which the witness has presented to the defendant from the plaintiffs in presence of Louis Genie.

W. ROE.

Judgment for the sum of seventy-nine pounds sixteen shillings and one penny, equal to forty-nine pounds seventeen shillings and sixpence halfpenny of lawful money of

the late Province of Quebec, with interest and costs of suit.

WILLIAM MONFORTON, *Acting Clerk.*

NOTE: The Minutes of the Court from the 5th September, 1792, to the 12th of September, 1793, are missing.

SEPTEMBER TERM.

33rd Geo. III.

COURT OF COMMON PLEAS; holden at the house of Alexis Maisonneville, Esq., in the Parish of L'Assomption, in the Western District and Province of Upper Canada, this twelfth day of September, in the year of our Lord one thousand seven hundred and ninety-three.

WESTERN
DISTRICT.
12 September, 1793.

Present: William Dummer Powell, first Judge of said Court.

Read the Commission of the first Judge with the third clause of the third chapter of the twenty-ninth of George the Third, and the fourth and fifth clauses of the eighth chapter of the thirty-second George the Third.

OPENED THE COURT.

Mr. Roe, attorney for the plaintiffs, filed the declaration and summons returned by the Sheriff in this cause, when the defendant being thrice called and not appearing it is ordered that his default be recorded accordingly.

Shieffelin and
Askin
vs.
Joseph Guidet.

Mr. Roe, attorney for the plaintiff, filed the declaration and summons returned by the Sheriff in this cause, when the defendant being thrice called and not appearing it is ordered that his default be recorded accordingly.

John McGregor
vs.
François dit
Prosper Tibaut.

Mr. Roe filed the declaration and summons returned by the Sheriff in this cause and the defendant appears in person and confesses the debt and the plaintiff's demand is just, upon which voluntary confession it is considered that the plaintiff do recover from the defendant the said sum, being three pounds sixteen shillings and threepence, current money of the Province, with costs.

John Askin,
Junior,
vs.
Jacob Young.

Mr. Roe, attorney for the plaintiff, filed the declaration and summons returned by the Sheriff in this cause, when the defendant being thrice called and not appearing it is ordered that his default be recorded accordingly.

John McGregor
vs.
James Urquhart.

George Meldrum
and Park
vs.
George Johns.

Mr. Roe, attorney for the plaintiffs, filed the declaration and summons returned by the Sheriff on this cause, when the defendant being thrice called and not appearing it is ordered his default be recorded accordingly.

Shieffeling &
Askin
vs.
Jean Baptiste
Sanscrainte.

The Sheriff returned a writ of fieri facias issued in this cause, with the opposition of Chas. Chene annexed. Mr. Roe, attorney for the plaintiff, in default of the opponent's appearance moved that said Charles Chene be ordered to appear in this Court on the last day of the present term to show cause why the Sheriff should not proceed to the sale of the property seized under the said writ of execution towards satisfaction of the judgment obtained by the plaintiff. Ordered accordingly.

William Macomb
vs.
William Groesbeck.

In consequence of a commission in the nature of a commission rogatoire issued from this Court the tenth day of September last requiring Daniel Campbell, John Robertson and John Stevenson, of Schenectady, in the United States, Esquires, to take the answers of Mathew Lound, of said Schenectady, to certain interrogatories thereto annexed, the said answers so taken by the said Commissioners were this day returned under their seals into this Court. Whereupon Mr. Roe, attorney for the plaintiff, moved that the said answers be filed among the records and taken as legal testimony in this cause.

By the Court: The rogatoire commission having issued by virtue of an express clause in an ordinance of the late Province of Quebec, virtually repealed by the fifth Clause of the first Chapter of the first statutes of Upper Canada and the which statute the proceedings of this Court are now directed, Mr. Roe can take nothing by his motion.

Court of Common Pleas adjourned to the sixteenth day of September, one thousand seven hundred and ninety-three.

WILLIAM MONFORTON, *Acting Clerk.*

Rules of Practice ordered by the Honourable William D. Powell, first Judge of His Majesty's Court of Common Pleas for the Western District, to be entered in the minutes of the said Court.

That there be four return days each term, the first, fourth, eighth inclusive and last day of the Term.

That all pleas be filed on the third day after the Return, Registration on the third day after the plea, and that three days' notice be given of trial.

That in default of plea being filed on the third day a peremptory rule be had to file plea in the Clerk's office within twenty-four hours after service of such rule, and the same to extend to registration.

That all notices and service of peremptory rules be made at the Clerk of the Court's office.

COURT OF COMMON PLEAS, holden at L'Assomption, the sixteenth day of September, one thousand seven hundred and ninety-three.

Present: The Honourable William D. Powell, first Judge of said Court.

Mr. Roe, for the plaintiff, filed the declaration and sunmons returned by the Sheriff in this cause, when the defendant being thrice called and not appearing it is ordered his default be recorded accordingly.

WESTERN
DISTRICT,
16 September, 1793.

Angus McIntosh
vs.
Bernard Campau.

Mr. Roe, for the plaintiff, filed the declaration returned by the Sheriff, the defendant appeared in person when Mr. Roe prayed the Court to amend the declaration.

Angus McIntosh
vs.
Phillipp Belanger.

Mr. Roe, for the plaintiff, filed the declaration. The defendant appeared in person, whereupon prior to any plea being filed in this cause, Mr. Roe prayed leave to amend his declaration so that in his present conclusions the same may stand amended for a sum of three hundred and sixty-one pounds, eighteen shillings and twopence and halfpenny, currency of the Province.

William Macomb
vs.
William Forsyth.

Ordered accordingly; whereupon the defendant appearing and acknowledged to be indebted by the deed now filed and sealed by him in a sum of two hundred and sixty-four pounds, eighteen shillings, twopence, halfpenny currency of the Province, with interest to be computed from the thirteenth day of May last, on which confession and motion of the plaintiff the Court order that judgment be recorded accordingly.

By the Court fi-fa ap'd 1st Jan., '94. Note in six months.

| | | | |
|----------------|-------|----|----|
| Debt | £261 | 18 | 2½ |
| Costs | 8 | 14 | 6 |
| | <hr/> | | |
| | £270 | 12 | 8½ |
| Writ | 5 | 0 | |

With interest from the 13th May, 1793, until paid.

C. S.

Mr. Roe, for the plaintiff, filed the declaration. The defendant appears in person and acknowledged to be in-

Gr. McGregor
vs.
Joseph Pouget.

debted to the plaintiff in the sum of two hundred pounds, nine shillings, ninepence halfpenny currency of this Province, it is considered by the Court that the plaintiff do recover from the defendant the said sum with interest and cost.

WESTERN
DISTRICT
19 September, 1793.

COURT OF COMMON PLEAS, holden at L'Assomption, the nineteenth of September, one thousand seven hundred and ninety-three.

Present: The Honourable William D. Powell, first Judge of said Court.

George McDougall
vs.
Jacques Chauvin.

Mr. Roe, attorney for the plaintiff, filed the declaration and summons returned by the Sheriff, when the defendant being thrice called and not appearing, it is ordered that his default be recorded accordingly.

George McDougall
vs.
Louis Burlieu.

Mr. Roe, attorney for the plaintiff, filed the declaration and summons returned by the Sheriff, when the defendant being thrice called and not appearing, it is ordered that his default be recorded accordingly.

John McGregor
vs.
James Urquhart.

Mr. Roe, attorney for the plaintiff, moved that the defendant be called and on his default of the twelfth instant, when the defendant being again thrice called and not appearing it is ordered that this second default be recorded accordingly, whereupon Mr. Roe, for the plaintiff, prayed for judgment and that a writ of inquiry do issue to the Sheriff to ascertain the damages sustained by the plaintiff in this suit.

By the Court.

Granted. Returnable the last day of the term.

Meldrum & Park
vs.
George Johns.

Mr. Roe, attorney for the plaintiff, moved that the defendant be called on his default of the twelfth instant, when the defendant being again thrice called and not appearing it is ordered that this second default be recorded accordingly, whereupon Mr. Roe for the plaintiff prayed for judgment and that a writ of inquiry do issue to the Sheriff to ascertain the damages sustained by the plaintiff in this suit.

Granted by the Court.

Schiefelin & Askin
vs.
Joseph Gaudet.

Continued to Monday next by consent of parties.

WESTERN
DISTRICT,
23 September, 1793.

COURT OF COMMON PLEAS, holden at L'Assomption, this twenty-third of September, 1793.

Present: The Honourable William D. Powell, first Judge of said Court.

Mr. Roe, attorney for the plaintiff, filed the declaration and summons returned by the Sheriff when the defendants being thrice called and not appearing it is ordered that their default be recorded accordingly.

James Allen
vs.
George Jacob and
Alexis Labute.

The defendant having appeared in person according to the rule of the last Court day and there asked what he hath to say why judgment should not be entered against him agreeable to the plaintiffs and acknowledges the debt of twenty-nine pounds twelve shillings, New York currency, to be justly due to the plaintiffs as testified by his note, dated at Detroit the twentieth day of July, 1790, filed in this cause and shown to him, wherefore it is considered that the plaintiffs do recover of defendant, the said sum being of the money of the Province, eighteen pounds, ten shillings, together with the costs to be taxed.

Jonathan
Shieffelin
and John Askin
vs.
Joseph Gaudet.

Mr. Roe, for the plaintiff, informed the Court that on the nineteenth instant a writ of inquiry issued on this cause and prays the same may be superseded, and that the confession of the debt by the defendant now present in Court be recorded.

John McGregor
vs.
James Urquard.

By the Court: Ordered. Whereupon the said James Urquard came in person in the Court and his note bearing date the fifteenth November, 1788, promising to pay to the plaintiff or order one hundred and fifty-four pounds, eighteen shillings, being exhibited to him he acknowledges the same to having been written and subscribed by him confessing the said debt to be justly due and releasing all errors in the proceedings in this cause, whereupon it is considered that the plaintiff do recover from the defendant the said sum and with costs to be taxed.

The defendant having filed his plea in the office, and the plaintiff by his attorney having replied praying the issue now raised might be inquired of when the defendant did the like, whereupon it is ordered that a venire do issue returnable on the first day of the ensuing term.

Angus McIntosh
vs.
Philipp Belanger.

COURT OF COMMON PLEAS, holden at L'Assomption, this 26th of September, 1793.

Present: The Honourable W. D. Powell, first Judge of said Court.

WESTERN
DISTRICT,
26 September, 1793.

Mr. Roe, attorney for the plaintiff, moved that the defendant be called on his default of the nineteenth instant, when the defendant being again thrice called and not appearing, it is ordered that this second default be recorded accordingly, whereupon Mr. Roe, for the plaintiff, prayed

George McDugall
vs.
Jacques Chauvin.

for judgment and that a writ of inquiry do issue to the Sheriff to ascertain the damages sustained by the plaintiff in this suit, returnable the 30th instant.

By Court: Granted.

George McDugall
vs.
Louis Beaulieu.

Mr. Roe, attorney for the plaintiff, moved that the defendant being called on his default of the nineteenth instant, when the defendant being again thrice called and not appearing, it is ordered that this second default be recorded accordingly, whereupon Mr. Roe, for the plaintiff, prayed for judgment and that a writ of inquiry do issue to the Sheriff to ascertain the damages sustained by the plaintiff in this suit, returnable the 30th instant.

By the Court: Granted.

WESTERN
DISTRICT,
30 September, 1793.

COURT OF COMMON PLEAS, holden at L'Assomption, this 30th day of September, 1793.

Present: The Honourable W. D. Powell, first Judge of said Court.

Meldrum & Park
vs.
George Johns.

The Sheriff returned the writ of inquiry with an injunction annexed.

By the Court: It is therefore considered that the plaintiffs recover from the defendant damages by the said jury, assessed to the amount of eleven pounds, sixteen shillings and threepence, currency of the Province, with their costs, to be taxed.

| | | |
|----------------------------|------|--------|
| Fi-fa paid 14th Nov., '93. | Net. | April. |
| Debt | £11 | 16 3 |
| Costs | 7 | 16 5 |
| | | <hr/> |
| | £19 | 12 8 |
| Writ | 5 | 0 |

Interest from Nov.

C. SMYTH.

George McDugall
vs.
Jacques Chauvin.

The Sheriff returned the writ of inquiry with an injunction annexed.

By the Court: It is considered that the plaintiff recover from the defendant damages by the jury assessed to the amount of fourteen pounds, five shillings and sixpence halfpenny, currency of the Province, with his costs, to be taxed.

Fi-fa issued 14th Nov., '93. Ret. April.

| | |
|-------------|----------|
| Debt | £14 5 6½ |
| Costs | 7 16 5 |

£22 1 11½

Writ 5 0

Interest from day of judgment.

C. SMYTH, *Clerk.*

The Sheriff returned the writ of inquiry with an injunction annexed.

George McDugall
vs.
Louis Beaulieu.

By the Court: It is considered that the plaintiff recover from the defendant damages by the jury assessed to the amount of four pounds, eighteen shillings and sevenpence, currency of the Province, with his costs, to be taxed.

Fi-fa issued 14th Nov., '93. Ret. in April.

| | |
|-------------|---------|
| Debt | £4 18 7 |
| Costs | 7 16 5 |

£12 15 0

Writ 5 0

With interest from date of judgment.

C. S.

George Jacob, one of the defendants, appeared in person and prayed that the default entered against him on the 23rd instant might be taken off so as to plead to the action.

By the Court: Ordered.

Mr. Jacob filed his plea and acknowledged the seal to the bond now produced.

The other defendant, Alexis Labute, being thrice called and not appearing, it is ordered that his default be recorded accordingly, whereupon Mr. Roe, attorney for the plaintiff, prayed that a writ of inquiry do issue to Sheriff to ascertain the damages sustained by the plaintiff in this suit.

By the Court: The Court will advise.

Upon the Sheriff's return on the writ of execution filed in this cause, the Court considers that the return day of the said writ be extended for three months, and that the same writ be delivered to the Sheriff.

James Allan
vs.
George Jacob and
Alexis Labute.

Shieffelin and
Askin
vs.
Jean Bpt. San-
crainte.

The Court adjourned to the 1st January next ensuing.

JANUARY TERM.

34th Geo. III.

WESTERN
DISTRICT.
1 January, 1794.

COURT OF COMMON PLEAS, holden at L'Assomption,
on Wednesday, the first day of January, 1794.

Present, the Honourable William Dummer Powell,
Esq., first Judge of said Court.

Wm. Forsyth
vs.
Mathew Elliott.
Ex. a.

Sheriff returned writ of summons and defendant being called, David Cowan appeared and filed defendant's letter of attorney, and on motion cause stands over until the regular time for pleading.

Angus McIntosh
vs.
Israel Ruland.

Sheriff returned writ of summons and defendant being thrice called and not appearing, on motion of Mr. Roe, counsel for the plaintiff, default is recorded against the defendant and eight days is allowed for defendant's appearance.

Schieffelin and
Askin
vs.
John Askin, Esq.

Sheriff returned writ of summons and defendant being thrice called and not appearing, on motion of Mr. Roe, counsel for the plaintiff, default is recorded against the defendant and eight days allowed for his appearance.

Jonathan
Schieffelin
vs.
John Askin, Esq.

Sheriff returned writ of summons and defendant being thrice called and not appearing, on motion of Mr. Roe, counsel for the plaintiff, default is recorded against the defendant and eight days allowed for his appearance.

John Bte. L'Arch
vs.
Gabriel Hanault.

Sheriff returned *capias ad res*, and on motion of Mr. Roe, it is ordered that the Sheriff do bring up the body of the defendant in three days.

Herman Eberts
vs.
Jean Gullbeau.
Affdavits above
ten pounds
sterling.

Sheriff returned *capias ad res*, whereupon personally appearing in Court, the Honourable Jacques Baby, Esquire. and Francois Baby, Esquire, both of Detroit, and acknowledged themselves to owe unto the plaintiff, Herman Eberts, the sum of twenty-four pounds, fifteen shillings, currency of the province, jointly and severally on condition that the defendant shall pay the costs and condemnation awarded by the Court unto the plaintiff, or that he shall surrender himself a prisoner, or that they will pay it for him.

Acknowledged before me,

WM. DUMMER POWELL.

The defendant being called appeared by his attorney, the Honourable Jacques Baby, who filed letter of attorney and called upon Francois Baby, Esquire, to prove the execution thereof, who being sworn deposed that he was present and saw the defendant execute the same as his act and deed.

Ex. A.

Sheriff returned Ci. Co. on writ now filed in Court, and on motion of Mr. Roe it is ordered that the Sheriff do bring up the body of the defendant in three days.

Meldrum & Park
vs.
Jacques Burel.

Mr. Roe, on behalf of the plaintiff, states to the Court that the Sheriff's officer, conveying the process for service in this cause had met with an accident, which prevented the Sheriff from returning it on this day agreeable to the tenor thereof, and prays that the said return be extended to the first day of the ensuing term, and the Sheriff being in court informed the Court of the truth of the premises. It is ordered by the Court accordingly.

Wm. Hands
vs.
Jean Bte.
Rheume.

Mr. Roe upon same reason moves for the like rule.
Granted.

Ant. Dufresne
vs.
Charles
Drouillard.

Mr. Roe moves same rule on like reason.
Granted.

Wm. Park
vs.
Francois Billet.

Mr. Roe upon the same reason moves for the like rule.
Granted.

Meldrum & Park
vs.
Joseph L'Enfant.

The defendant, Alexis LeBute, appeared and prayed default against him be taken off, which being ordered and he acknowledging the bond filed in this cause to be his proper act and deed, it is considered by the Court, on motion of Mr. Roe, the said Alexis showing nothing to the contrary, that the plaintiff do recover from the defendants the sum of sixty-two pounds, ten shillings, currency, with interest from the first of January, one thousand seven hundred and ninety-two, with costs of suit.

James Allan
vs.
Geo. Jacob and
Alexis LeBute.

Court adjourned to Saturday, the 4th instant.

CHAS. SMYTH.

COURT OF COMMON PLEAS, holden at L'Assomption, on Saturday, 4th January, 1794, according to adjournment.

PROVINCE OF
UPPER CANADA,
WESTERN
DISTRICT.
4 January, 1794.

Present, the Honourable William Dummer Powell, Esquire, first Judge.

Meldrum & Park
vs.
Thos. Clark.

The Sheriff returned writ of summons. Defendant appeared in person, and having prayed oyer of the covenant, which was read to him in court for answer to the plaintiffs' declaration, says that he has not neglected anything which by the said covenant he covenanted to do, but hath performed all the several engagements and therefore is not indebted in the said sum of one hundred and ninety pounds, currency, or in any part thereof.

Meldrum & Park
vs.
Jacques Burrel.

On *capias* against the said defendant, Jacques Burrel, of Detroit, for the sum of two hundred and fifty pounds, currency, at the suit of the said plaintiffs. Affidavit £244 16s. 3d. Bail perfected in court, John McGregor, of Detroit, merchant, and Mathew Dalson, of the same place, innkeeper. Each of the bail £250.

Defendant not appearing default is recorded.

Defendant is surrendered by his bail before plea pleaded this 14th March, 1794. Debt sworn to £244 16s. 3d.

W. D. POWELL, *J.C.P.*

J. Bte. L'Arch
vs.
Gabriel Hanault.

Mr. Roe, for plaintiff, prays that the rule made in this cause on Sheriff to bring up the defendant's body be extended to Wednesday next.

Granted.

Herman Eberts
vs.
Guilbeau.

Peremptory rule to plead on Wednesday next.

Wm. Forsyth
vs.
Mathew Elliott.
filed Ex. b.

David Cowan, attorney by procuration to defendant, appeared and proved letter of attorney. Filed affidavit and motion for continuance until next term, whereupon the Court considers that the defendant have time to plead until the first day of said term.

Schieffelin and
Askin
vs.
John Askin, Esq.

Letter of attorney filed and proved by Robert Stevens, one of the subscribing witnesses.

Ex. a.

William Harffy, Esq., attorney by procuration to the defendant, moves the Court that the default of last court day be taken off the defendant, and that he be allowed to enter his appearance. Allowed by the Court on payment of costs.

Ex. b.

Defendant's attorney filed affidavit, and thereupon moves the Court to continue this action until the first return day of July term next. Court will consider and the parties given to the next adjournment.

Wm. Harffy, attorney by procuration to the defendant, moves similar rule to the foregoing, whereupon the Court orders default to be taken off on payment of costs.

Jonathan
Schieffelin
vs.
John Askin, Esq.

Defendant's attorney filed affidavit, and thereupon moves the Court to continue this action until the first return day of July term.

Ex. a.

The Court will consider and parties given to next adjournment.

The Court adjourned, till Wednesday, the 8th instant.
CHAS. SMYTH, *Clerk*.

COURT OF COMMON PLEAS, holden at L'Assomption, 8th January, 1794.

PROVINCE OF
UPPER CANADA.
WESTERN
DISTRICT.
8 January, 1794.

Present: The Honourable Wm. Dummer Powell, Esq., first Judge,

Sheriff filed return writ. Defendant called and not appearing. Default.

Chas. Smyth
vs.
Wm. Groesbeck.

W. D. P.

On motion of Mr. Roe, defendant called and not appearing, it is ordered that default be entered and that a writ of enquiry do issue, returnable the last day of term.
Issued Ret. 17th.

Angus McIntosh
vs.
Israel Roland.

On Capias against defendant for the sum of twenty-five pounds, currency, at the suit of the plaintiff.

L'Arch
vs.
Hanault.

Affidavit above £10 sterling.

Bail perfected in court. John McGregor, of Detroit, Merchant, and James May of the same place, Merchant.

2 Rules.

Each of the bail of £18 15s.

Letter of attorney to John Askin, Esquire, filed and proved by Robert Woolsey, one of the subscribing witnesses. Defendant entered appearance.

Ex. b.

Three days for plea allowed.

Rule on Sheriff to bring up body filed. Ex. a.

Letter of attorney filed and proved by Salmon Godrich, one of the subscribing witnesses.

Meldrum & Park
vs.
Jacques Burel.

James May, attorney by procuration to defendant, moves that default of last court day be taken off, and that he be allowed to enter appearance for defendant. Granted on payment of costs.

Defendant's attorney filed affidavit and moved the Court to continue this action until next term, and Mr. Roe, stating that the defendant ought not to have the time

Ex. b.

prayed for, it is ordered that the defendant do plead in three days.

Oyer prayed for and granted.

Eberts
vs.
Guilbeau.

Mr. Roe filed return of rule of last court day, Ex. b., and on motion it is ordered that a writ of enquiry do issue returnable last day of term.

Issued ret. 17th.

C. S.

Schieffelin and
Askin
vs.
John Askin.

Mr. Roe further continued on motion till next court day.

Jon. Schieffelin
vs.
John Askin.

Continued as above.

Meldrum & Park
Thos. Clark.
Ex. a.

Mr. Roe filed replication and moves for venire returnable on Monday next. Ordered. Returned and continued on motion of the plaintiff's attorney until Wednesday next.

Court adjourned till Saturday next, 11th inst.

CHAS. SMYTH, *Clerk.*

PROVINCE OF
UPPER CANADA.
WESTERN
DISTRICT.
11 January, 1794.

COURT OF COMMON PLEAS, holden at L'Assomption, Saturday, 11th January, 1794, according to adjournment.

Present: The Honourable Wm. Dummer Powell, Esq., first Judge.

Meldrum & Park
vs.
Thos. Clark.

Discontinued on motion of plaintiff's attorney.

Schieffelin and
Askin
vs.
John Askin.

Mr. Roe filed affidavit. Ex. continued till next court day.

Schieffelin
vs.
John Askin.

Mr. Roe filed affidavit. Ex. continued till next court day.

Meldrum & Park
vs.
Burel.
Ex. c.

Mr. Roe moved for plea. Defendant's attorney filed affidavit and motion to continue until July term, and on suggestion of Mr. Roe continued until next court day, having matter to oppose why the defendant's motion ought not to be granted.

Jean Bapte. L'Arch
vs.
Gabriel Hanault.

Defendant filed plea, continued until next court day.

Court adjourned till Wednesday, 15th instant.

CHAS. SMYTH, *Clerk.*

COURT OF COMMON PLEAS, holden at L'Assomption, Wednesday, 15th January, 1794, pursuant to adjournment.

Present: The Honourable William Dummer Powell, Esq., etc., etc.

PROVINCE OF
UPPER CANADA.
WESTERN
DISTRICT.

15 January, 1794.

Defendant called does not appear and his former default being read, on motion by Mr. Roe, judgment for plaintiff, and that a writ do issue commanding the Sheriff to enquire of the plaintiff's damages in this plea, returnable first day of next term.

Chas. Smyth
vs.
Wm. Groesbeck.

Ex'n. issued 4th Apr. 1794, returnable Sept. term.

Debt £20 13 11

Costs 7 17 8

£28 11 7

Writ 5 0

With interest on £20 13s. 11d., from date of judgment.
W. D. POWELL, J.C.P.

Mr. Roe, of counsel for the plaintiffs, moves that in consequence of the cause shown in the affidavit of the plaintiffs now filed and agreeable to the rules for regulating the practice in this Court that a rule be made that the defendant do plead to this writ in three days.

Schieffelin and
Askin.
vs.
John Askin.

By the Court: Time is given to the defendant till the first day of next term to file his plea in this cause, subject to further extension if at that day he shall certify the Court that he has used all reasonable means to procure legal advice for his plea, subject also to this further condition, that he consent that in case of judgment against him in this cause, legal interest upon such sum as may be adjudged to the plaintiff shall commence from the last day of this term.

The defendant's attorney, present in court, accepts of the condition of the rule for continuance.

Defendant filed letter of attorney, proved in court. Ex.

Mr. Roe, in consequence of the rule made, prays the Court that good and sufficient security may be given to answer the judgment of the Court. Over-ruled.

Mr. Roe moves similar rule in this cause.

By the Court: Peremptory rule on defendant to plead first day of next term.

Defendant files letter of attorney proved in court, marked Exhibit.

Issued Rule 12th March, '94.

Jonathan
Schieffelin
vs.
John Askin.

Angus McIntosh
vs.
Israel Ruland.

Petition of Ann Ruland, wife of defendant, filed.
The Court, in view of declaration and writ of summons, order stay of execution.

Meldrum & Park
vs.
Burel.

On consent of parties cause continued till next term.

L'Arch
vs.
Hanault.

Continued for replication.

Court adjourned till Friday, 17th instant.

CHAS. SMYTH, *Clerk.*

PROVINCE OF
UPPER CANADA.
WESTERN
DISTRICT.
17 January, 1794.

COURT OF COMMON PLEAS, L'Assomption, Friday, 17th January, 1794, according to adjournment.

Present: Honourable Wm. Dummer Powell, Esquire, first Judge, etc., etc.

Angus McIntosh
vs.
Israel Ruland.

Discontinued on motion of Mr. Roe for plaintiff.

L'Arch
vs.
Hanault.

Continued, on motion of Mr. Roe, till next term for replication.

Court adjourned till March term next.

CHAS. SMYTH.

MARCH TERM.

34th Geo. III.

PROVINCE OF
UPPER CANADA.
WESTERN
DISTRICT.
14 March, 1794.

COURT OF COMMON PLEAS, holden at L'Assomption, on Friday, the fourteenth day of March, 1794.

Present: The Honourable William Dummer Powell, Esquire, first Judge of said Court, etc., etc.

Meldrum & Park
vs.
Francois Billette.

Sheriff returned writ of summons. Defendant called, does not appear. Default, on motion of Mr. Roe, of counsel for plaintiffs.

Wm. Hands
vs.
J. Bte.
Rheame.

Sheriff returned writ of summons. Defendant called, does not appear. On motion of Mr. Roe, plaintiff's attorney, default is recorded.

Antoine Dufresne
vs.
Charles Drouillard.

Sheriff returned writ. Defendant called. Default. Mr. Roe, for plaintiff, prays default. Ordered.

Charles Smyth
vs.
Wm. Groesbeck.

The writ of enquiry of damages recorded in this cause on judgment by default, being this day returned by the Sheriff, and the plaintiff being Clerk of the Court in office, it is considered by the Court that the plaintiff, Charles Smyth, Esquire, do recover of the defendant, William Groesbeck, merchant, the damages found against him by

the jury, summoned on the said writ, amounting to twenty pounds, thirteen shillings and elevenpence, together with his costs to be taxed by the Court.

WM. DUMMER POWELL, *J.C.P.*

Sheriff returned writ and summons.

Defendant personally appears, and for answer to the plaintiff's declaration, says that he is not indebted to the plaintiff in the sum demanded, or any other sum, and Mr. Roe, of counsel for the plaintiff, says that he is indebted in manner and form and prays that it may be enquired of.

John Askin, Esq.,
vs.
Pierre Solo.

On consent of parties, it is ordered that George McDougall, of Detroit, merchant, and George Sharpe, Esquire, of the same place, merchant, mutually chosen by the said parties, be named arbitrators in this cause, and that the said arbitrators do give in their award in writing, returnable in eight days.

Sheriff returned writ and summons.

Defendant personally appears and for plea says he is not indebted in manner and form to the plaintiff, and Mr. Roe, for the plaintiff, replies that he is indebted in manner and form and prays that it may be enquired of by the Court.

John Askin, Esq.,
vs.
Alexis Solo.

On motion of Mr. Roe, a writ of venire is ordered to be issued, returnable on Tuesday next.

On motion of defendant to withdraw his plea it is granted, and on consent of parties similar rule, as above, is ordered to the same arbitrators.

On motion of Mr. Roe, it is ordered peremptorily that the defendant do plead on next court day.

Meldrum & Park
vs.
Jacques Burel.

On this day, the bail having surrendered the principal, it is ordered that the Sheriff do take him into custody.

Defendant, present in court, says that he is not indebted in manner and form to the plaintiffs as by their declaration it is alleged.

Meldrum & Park
vs.
Jacques Burel.

Continued for replication on motion of Mr. Roe.

Mr. Roe moves the Court that a peremptorily rule be made upon the defendant to plead in three days, and the defendant's attorney appearing stated to the Court that the same reason exists which induced him to pray time last term. By the Court: The delay to plead having been granted on affidavit by the defendant's special attorney, that he could not plead for want of legal advice with safety to his constituents, there being only one attorney practicing in this court and that he had reason to expect before this

Wm. Forsyth
vs.
Math. Elliott.

day advice how to plead, which advice the said attorney now suggests to have been expected by the express not yet arrived but hourly expected, the Court extended the time to plead until next Court day.

Schieffelin &
Askin
vs.
John Askin, Esq.

Peremptory rule to plead in three days, on motion of Mr. Roe.

J. Schieffelin
vs.
Jno. Askin.

Continued till next court, on motion of plaintiff.

L'Arch
vs.
Hanault.

Continued, on motion of Mr. Roe, for replication.

MEMORANDUM: The Sheriff represents to the Court that there is no gaol in the district for the reception of civil prisoners.

Court adjourned till Tuesday, the 18th instant.

CHAS. SMYTH, *Clerk.*

PROVINCE OF
UPPER CANADA.
WESTERN
DISTRICT.
18 March, 1794.

COURT OF COMMON PLEAS, holden at L'Assomption, on Tuesday, the 18th day of March, 1794, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, first Judge, etc.

John Askin, Esq.,
vs.
Jos. Mainville
dt. Duchene,
Deft.

Summons returned. Defendant called, does not appear. Default on motion of Mr. Roe.

Schieffelin and
Askin
vs.
John Askin.

Mr. Roe filed peremptory rule of last Court. Defendant appears in person and files plea in abatement.

Continued on motion for communication.

Jonathan
Schieffelin
vs.
John Askin.

Plea filed. Continued for communication.

Forsyth
vs.
M. Elliott.

On motion of defendant's attorney to plead, plea filed. Continued on motion for communication. Granted.

Meldrum & Park
vs.
Jacques Burel.

Mr. Roe files replication. On motion of Mr. Roe ordered that venire do issue, returnable on Friday next.

L'Arch
vs.
Hanault.

Mr. Roe files replication. On motion ordered that venire issue returnable on Friday next.

Court adjourned till Friday next, 21st instant.

CHAS. SMYTH, *Clerk.*

COURT OF COMMON PLEAS, holden at L'Assomption, on Friday, the 21st day of March, 1794, according to adjournment.

Present: The Honourable Wm. Dummer Powell, Esq., first Judge, etc.

PROVINCE OF
UPPER CANADA.
WESTERN
DISTRICT.
21 March, 1794.

Summons returned. Defendant called, does not appear. Default on motion of Mr. Roe for plaintiff.

John Burrel
vs.
Wm. Groesbeck.

Defendant called, does not appear. Read former default. On motion of Mr. Roe, judgment for plaintiffs, and that a writ of enquiry do issue returnable last day of term.

Meldrum & Park
vs.
Fran. Billette.

Defendant called, does not appear. Default on motion. Judgment for plaintiff and that a writ of enquiry do issue returnable last day of term.

Hands
vs.
Rheume.

Defendant called. Does not appear. On motion, default and judgment for the plaintiff. Writ of enquiry do issue, returnable last day of term.

Antoine Dufresne
vs.
Drouillard.

Sheriff returned writ of fi-fa. Defendant called, does not appear. On motion ordered that fi-fa issue upon judgment, and that costs of fi-fa be allowed plaintiff.

John Askin, Esq.,
vs.
Guillaum
LaMothe.

Fi-fa issued 22nd May, 1794, returnable Jan., 1795.

| | |
|-----------------|----------|
| Debt | £73 11 0 |
| Costs | 8 0 6 |
| Sub-costs | |

Int. on £73 11s. from 26th Aug., '89.

C. SMYTH.

On motion of Mr. Roe, it is ordered that the rule of submission of the fourteenth instant be extended to Tuesday, the twenty-fifth, for return,

John Askin, Esq.,
vs.
Pierre Solo.

On motion of Mr. Roe, it is ordered that the return of venire be extended to Tuesday next, on suggestion that the jury could not be warned, it being impossible to cross the river owing to the ice. Sheriff present in court reports this circumstance.

Meldrum & Park
vs.
Jacques Burel.

The defendant's attorney filed affidavit and moves the Court that the trial of this issue be put off until July term for want of a material evidence, and Mr. Roe, for the plaintiff, admits the fact stated in the said affidavit to be proved by the said material evidence to be true, and prays the Court that venire awarded last court day be made returnable on Tuesday next.

J. Bte. L'Arch
vs.
Gab. Hanault.

By the Court: Ordered that return of venire be extended, returnable as above.

Wm. Forsyth
vs.
M. Elliott.

Mr. Roe filed replication. On motion of Mr. Roe, ordered that venire do issue, returnable on Thursday next for trial in this issue.

J. Schieffelin
vs.
John Askin.

Mr. Roe filed replication, and states to the Court that as issue is raised in this cause a venire may be awarded, returnable on Thursday next.

By the Court: Over-ruled and next court given defendant to consider of the said reply and rejoin.

Schieffelin and
Askin
vs.
John Askin.

Mr. Roe, for plaintiffs, files plea of demurrer. On motion to be argued on Tuesday next.

Court adjourned till Tuesday next, the 25th March inst.

CHAS. SMYTH, *Clerk.*

PROVINCE OF
UPPER CANADA.
WESTERN
DISTRICT.
25 March, 1794.

COURT OF COMMON PLEAS, holden at L'Assomption, on Tuesday, the twenty-fifth day of March, 1794, according to adjournment.

Present: The Honourable William Dummer Powell, Esquire, first Judge, etc.

John Askin, Esq.,
vs.
Pierre Solo.

Mr. Roe files award arbitrators named in this cause. Continued.

Same
vs.
Jos. Mainville
dt. Duchene.

Defendant appears by his attorney, Charlotte Souigny, his wife, and files letter of attorney proved in court by the oath of Louis Bourrasa, confessed judgment for the sum of twenty-five pounds currency, but states to the Court that her husband, the defendant, has not yet received the plaintiff's title to the land in question. Wherefore the Court orders stay of execution until the plaintiff files in court the said title from Mominier, the person from whom the plaintiff purchased the land.

Title filed in the office 27th April, 1794.

C. SMYTH.

Ex'n. issued 30th April, 1794, ret. last day Sept. term next.

| | | | |
|-------------------------|-----|---|---|
| Debt | £25 | 0 | 0 |
| Costs | 6 | 8 | 2 |
| | | | |
| | £31 | 8 | 2 |
| Writ | | 5 | 0 |
| Interest from judgment. | | | |

C. SMYTH, *Clerk.*

Sheriff returns venire with panel annexed.

Meldrum & Park
vs.
Jacques Burel.

Jury called and sworn:—

1. Antoine Dufresne, merchant.
2. Laurent Parrente, yeoman.
3. Antoine Labaddy, pr., yeoman.
4. Joseph Barthelom, yeoman.
5. Dominique Goddette, yeoman.
6. Julien L'Bute, fils, yeoman.
7. Jean Bapte. Chapperton, yeoman.
8. Laurent Marrentet, yeoman.
9. Francois Mouton, yeoman.
10. Bte. Labaddy, fils, yeoman.
11. Joseph Pillet, yeoman.
12. Francois Meloche, yeoman.

Mr. Roe files subpoena issued in this cause.

Charles Morand, Esq., called, sworn to give evidence.

Robert Gambell, gentleman, and Jonathan Schieffelin, merchant, sworn.

Jury return verdict for defendant.

Upon argument on demurrer Court order that the defendant do plead over.

Schieffelin and
Askin
vs.
John Askin.

Mr. Roe files rule of last Court and prays that peremptory rule be made on defendant to rejoin in three days, and the defendant present in court states that he has not legal advice how to answer, whereupon the Court overrules plaintiff's motion and order that the defendant do rejoin peremptorily on the first day of next term.

J. Schieffelin
vs.
John Askin, Esq.

Court adjourned till 27th inst.

C. SMYTH, *Clerk.*

COURT OF COMMON-PLEAS, holden at L'Assomption, on Thursday, the twenty-seventh day of March, 1794, according to adjournment.

Present: The Honourable William Dummer Powell, Esq., first Judge, etc.

PROVINCE OF
UPPER CANADA,
WESTERN
DISTRICT.
27 March, 1794.

On motion of Mr. Roe, and consent of defendant's attorney filed, Court ordered that the venire issued in this cause returnable of this day, be extended to Monday next, 31st inst.

Wm. Forsyth
vs.
M. Elliott.

Sheriff return of nulla bona filed on fi-fa issued in this cause.

Geo. McDougall
vs.
Louis Beaulieu.

Mr. Roe moves that a writ of ca. ad. sa. do issue in this cause.

Court will advise.

Schieffelin and
Askin, Pltfs.,
vs.
John Askin, Deft.,
and
Jonathan
Schieffelin, Pltf.,
vs.
John Askin, Deft.

The parties, plaintiffs and defendant, in the said causes respectively being present in court, it is ordered by the Court on motion of Mr. Roe, for plaintiffs, and with the consent of the said parties that the respective pleadings be withdrawn, the bonds of arbitration be cancelled, the award of the umpire set aside, and the several matters in dispute between the said plaintiffs and plaintiff and defendant be submitted to the verdict of a jury on the following points, to wit, what and to what amount are the overcharges and errors in account furnished to the said plaintiffs by the defendant for the years one thousand seven hundred and eighty-nine, one thousand seven hundred and ninety, one thousand seven hundred and ninety-two and ninety-one. What is the amount of the private account between Schieffelin, plaintiff, and Askin, defendant. If the amount of the said private account should stand as an item of credit in account with the said Schieffelin and Askin and John Askin; If the private account of John Askin, Junior, with John Askin, the defendant, prior to the commencement of the co-partnership between Schieffelin and Askin, should stand as an item of debit in account of said Schieffelin and Askin with John Askin. What should be the amount of credit to be given to the said Schieffelin and Askin by the said John Askin on account of furs remitted by them to said John Askin in one thousand seven hundred and ninety-one.

On motion of Mr. Roe, with consent of the said parties, it is ordered that a venire do issue for trial on Monday next, the thirty-first inst.

Court adjourned till to-morrow.

CHAS. SMYTH.

PROVINCE OF
UPPER CANADA.
WESTERN
DISTRICT.
23 March, 1794.

COURT OF COMMON PLEAS, holden at L'Assomption, on Friday, 28th day of March, 1794, according to adjournment.

Present: The Honourable Wm. Dummer Powell, Esq., first Judge, etc.

Burrel
vs.
Groesbeck.
Issued.

Defendant called does not appear. Former default read on motion. Judgment for the plaintiff and that a writ of enquiry do issue returnable first day of July term next.

Geo. McDougall
vs.
Louis Beaulieu.

Continued till Monday.

Judgment for the sum awarded with costs, being seven pounds, N.Y. currency.

John Askin, Esq.,
vs.
Pierre Solo.

Execution issued 23rd May, '94, ret. 1st Jan., '95.

| | | | |
|-------------|----|----|---|
| Debt | £4 | 7 | 6 |
| Costs | 6 | 18 | 2 |

£11 5 8

Writ 5 0

Int. on £4 7s. 6d. from date of judgment.

C. S.

Court adjourned till Monday, 31st inst.

CHAS. SMYTH, *Clerk.*

COURT OF COMMON PLEAS, holden at L'Assomption, on Monday, the 31st day of March, 1794, according to adjournment.

Present: The Honourable William Dummer Powell, Esq., first Judge, etc.

PROVINCE OF
UPPER CANADA.
WESTERN
DISTRICT.
31 March, 1794.

Sheriff returns venire with panel annexed.

Jury called and sworn:—

1. George Meldrum, of Detroit, merchant.
2. John McGregor, of Detroit, merchant.
3. James Fraser, of Detroit, merchant.
4. John Martin, of Detroit, merchant.
5. George Sharpe, of Detroit, merchant.
6. William Shepherd, of Detroit, merchant.
7. Robert Abbott, of Detroit, merchant.
8. Geo. McDougall, of Detroit, merchant.
9. Angus McIntosh, of Detroit, merchant.
10. Wm. Hands, of Detroit, merchant.
11. Richard Pattinson, of Detroit, merchant.
12. Moses David, of Detroit, merchant.

John McGregor, merchant.

James McDonell, merchant.

Sworn for plaintiffs.

John Askwith, gentleman

Robert Stevens, gentleman.

Sworn on behalf of defendant.

Jury returned verdict as follows:—Verdict of the special jury on the points submitted to their decision by a rule of His Majesty's Court of Common Pleas for the Western District, Province of Upper Canada, in this cause:—

First: In conformity with the said rule of court, the jurors do find and say that the amount of overcharges and errors in account.

Schieffelin and
Askin
vs.
John Askin, Esq.,
and
Jonathan
Schieffelin
vs.
John Askin.

Account furnished to the said plaintiffs, Schieffelin and Askin, by the said defendant, John Askin, Esq., for the years one thousand seven hundred and eighty-nine, one thousand seven hundred and ninety, one thousand seven hundred and ninety-one and one thousand seven hundred and ninety-two, do amount to the net sum of ninety pounds seventeen shillings, New York currency.

Second: The said persons do also find and say that the amount of the private account between the said Jonathan Schieffelin and John Askin, defendant, is the sum of two hundred and eighty pounds, one shilling and one penny halfpenny, New York currency.

Third: The said Jurors do also determine that the amount of the said private amount should stand as an item of credit in account with the said Scheffelin and Askin and John Askin.

Fourth: The said Jurors also find that the private account of John Askin, Jun., with John Askin, defendant, prior to the commencement of the co-partnership of Scheffelin and Askin and amounting to the sum of two hundred and twenty-four pounds, thirteen shillings and four pence, New York currency, should not stand as an item of debit in account with the said Scheffelin and Askin and John Askin.

Fifth: The said Jurors do lastly find that the amount of credit to be given the said Scheffelin and Askin, by the said John Askin, on account of furs remitted by them to the said John Askin in one thousand seven hundred and ninety-one should be the sum of three thousand, six hundred and forty-six pounds, eight shillings, New York currency.

Wm. Forsyth,
Pltf.,
vs.
Math. Elliott.

On motion of Mr. Roe, and on consent of defendant's attorney, it is ordered that venire issued in this cause and returnable of this day be discharged, and that a venire do issue for trial on the second day of July term.

Sub. issued and venire.

Angus McIntosh
vs.
Pierre LaBute.

Sheriff filed return of writ. Defendant appeared, and on his confession judgment for plaintiff for the sum of twenty-nine pounds, eighteen shillings, with costs.

Ex'n issued 30th Apr., '94. Ret. Sept. term.
Debt £29 18 0
Costs

Writ 5 0
Interest from date of judgment.

C. SMYTH.

Sheriff filed return of writ. Defendant called, does not appear. Default on motion.

LePage, Pltf.,
vs.
Ouillet.

Sheriff returns writ of enquiry awarded in this cause on judgment of default. On motion, judgment for the plaintiffs for the sum of forty-six pounds two shillings and threepence currency, with costs.

Meldrum & Park
vs.
Francois Billette.

Ex'n. issued 30th April, '94. Ret. last day Sept. term.

Debt £46 2 3

Costs

Writ 5 0

Interest from judgment.

C. SMYTH, Clerk.

Sheriff returns writ of enquiry awarded in this cause on judgment of default. Judgment for the sum of one hundred and thirty-five pounds, eighteen shillings and five pence, with interest from the seventeenth day of March, one thousand seven hundred and ninety-two, with costs of suit.

Wm. Hands
J. Bte. Rheame.

Sheriff returns writ of enquiry. Judgment for the sum of eighty-five pounds, eight shillings and fourpence half-penny, with costs.

Dufresne, Pltf.,
vs.
Drouillard.

Ex'n. issued Apr. 30, '94. Ret. last day of Sept. term.

Debt £85 8 4½

Costs

Writ 5 0

Interest from judgment.

C. SMYTH, Clerk.

Ordered on motion of Mr. Roe that Ca. ad. sa do issue against the defendant for satisfaction of judgment rendered in this cause.

Geo. McDougall
vs.
Louis Beaulieu.

Issued ca. dated of this day ret. 1st Court.

Subsequent costs

Writ £0 5 0

C. SMYTH, Clerk.

Sheriff's return of nulla bona filed. On motion of Mr. Roe ordered that ca. ad. sa. do issue against the defendant for satisfaction of judgment rendered in this cause.

Geo. McDougall
vs.
Jacques Chovin.

Issued dated of this day, ret. 1st Court.

Subs. costs.

Writ.

Court adjourned till July term.

CHAS. SMYTH, Clerk.

COURT OF OYER AND TERMINER.

PROVINCE OF
UPPER CANADA.
DISTRICT OF
HESSE.
3 September, 1792.

At His Majesty's Court of Oyer and Terminer and General Gaol Delivery, holden at L'Assomption, in and for the District of Hesse, in the Province of Upper Canada, this third day of September, 1792, were

Present: Wm. Dummer Powell, Esquire, and his fellows.

The King's Commission read.

The Sheriff returned the precept and calendar of prisoners.

Called over the panel of Justices, Grand and Petty Jurors and Peace Officers.

The following persons took the oath as Grand Jurors, to wit:—

1. James May, of St. Annes, merchant.
2. John Scheiffelin, of St. Annes, gentleman.
3. William Caldwell, of Detroit, Esq.
4. James Allen, of St. Anne, merchant.
5. Geo. McDougall, of St. Anne, merchant.
6. James Fraser, of St. Anne, merchant.
7. David Robertson, of St. Anne, merchant.
8. John Askin, Jun., of St. Anne, merchant.
9. James McDonell, of St. Anne, merchant.
10. Bazil Campeau, of St. Anne, gentleman.
11. Joseph Visgar, of St. Anne, merchant.
12. Charles Girardin, of St. Anne, merchant.
13. Charles Morran, of St. Anne, gentleman.
14. Francois Gamelin, of St. Anne, gentleman.
15. Montigny Louvigny, of St. Anne, gentleman.
16. Francois Chabert, of St. Anne, Esquire.

William Scott, of Detroit, was duly sworn to attend them during the Assizes.

W. R., C. C. O. and T.

The above persons being charged withdrew, and William Lamothe, Esquire, returned as a Grand Juror, this day appeared, and was excused attendance by the Court as being employed in the King's service in quality of Indian Interpreter.

The following persons were defaulted as Grand Jurors,
to wit:—

1. George Sharp, of Detroit, Esquire.
2. Joncaire Chabert, of Detroit, Esquire.
3. Matthew Elliott, of Detroit, Esquire.
4. Alexis Maisenville, of Detroit, Esquire.
5. Chev'r. De Celoron, of Detroit, gentleman.
6. Louis Beaufait, of Detroit, gentleman.
7. Bapt'e Maloche.

The following Justices of the Peace were defaulted,
to wit:—

1. Alexander Grant, Esquire.
2. Alexander McKee, Esquire.
3. Matthew Elliott, Esquire.
4. Alexis Maisenville, Esquire.
5. George Sharp, Esquire.
6. Angus McIntosh, Esquire.
7. Charles Gouin, Esquire.
8. Joncaire Chabert, Esquire.
9. William Park, Esquire.
10. George Leith, Esquire.

The following Peace Officers were defaulted, to wit:—

1. Alexis Maisenville, Esquire, Captain.
2. Bapt'e Chapoton.
3. Charles Gouin.
4. Nich'l Gouin.
5. Antoine Beaubien.
6. Francis Baby.
7. Pierre Tremblay.
8. J. B'te Cicot, and
9. Gab'le Godfroy.

The following persons were defaulted as Petty Jurors,
to wit:—

1. James Urquhart, of L'Assomption, merchant.
2. Laurant Parrent, of L'Assomption, yeoman.
3. Will'm Forsyth, of St. Anne, innkeeper.
4. Will'm Sorrel, of St. Anne, innkeeper.
5. Joseph Edge, of St. Anne, blacksmith.
6. Antoine Beaubien, of St. Anne, gentleman.
7. Harry Facer, of St. Anne, blacksmith.

The Coroner filed an inquisition held on the body of
Alex'r Clark. Verdict: Natural death.

Do. on the body of Wawanisse, an Indian man at Michi-
limackinac. Verdict: Murder by persons unknown.

Do. on the body of Francis Lalonde, taken at Saguiua.
Verdict: Death caused by Louis Roy.

Do. on the body of Pierre Grocher, taken at Detroit.
Verdict: Wilful murder by an Indian man called Guillet.

The Court ordered the clerk to prepare the indictments on the inquisitions of Pierre Grocher and Francis Lalonde.

The Grand Jury being returned into court, present, that a murder had been committed on the person of Albert Graverot, and request the witnesses may be brought before them to-morrow.

That an Indian man named Wawanisse has been murdered, and request the witnesses may be brought forward as aforesaid.

Ordered, that the Clerk do cause the aforesaid witnesses to attend to-morrow morning at ten of the clock.

The Grand Jury also present, that at the last Session of Oyer and Terminer and General Gaol Delivery for this District, a bill was found against Chabouguoy and Cawguochish, two Indian men, for the murder of David Lynd, alias Jacquo, of the River a La Tranche, and that with regret, they see the said Indians at large without being brought to trial.

Ordered, that a Warrant do issue, whereby the Sheriff for this district be ordered to apprehend the said Chabouguoy and Cawguochish, and have their bodies before this Court to answer to the said indictments.

Adjourned till to-morrow morning at ten of the clock.

W. ROE, Clerk C. O. and T.

Issued and delivered warrants to the staff on this order this 3rd Sept., 1792.
W. R., C.C.

PROVINCE OF
UPPER CANADA.
DISTRICT OF
HESSE.
4 September, 1792.

Court of Oyer and Terminer and General Gaol Delivery, holden in the Parish of L'Assomption, in and for the District of Hesse, this fourth day of September, 1792, pursuant to adjournment.

Present: Wm. Dummer Powell, Esquire, and his fellows.

Opened the Court after the usual proclamation.

The Grand Jury as of yesterday to the exception of Mr. George McDougall retired to the house of Madam Marantate, with a bill of indictment against Louis Roy for the murder of Francis Lalonde, at Saguiua, which they returned a true bill, whereupon it is ordered, on motion of the Clerk that a writ of capias do issue, whereby the Sheriff for this district be ordered to have the body of the said Louis Roy before this court on Thursday, the sixth day of August, at the hour of ten in the forenoon, to answer to the said indictment.

Issued and delivered warrant to the sheriff on this order this 4th Sept., '92.
W. R., C.C.

The Clerk delivered to the Grand Jury a bill of indictment against an Indian man called Guillet, for the murder of Pierre Grocher, late of Detroit, mariner, with which they retired and returned the same a true bill, whereupon it is ordered, on motion of the Clerk, that a writ of *capias* do issue, whereby the Sheriff for this district be ordered to have the body of the said Indian man called Guillet before this Court, to answer to the said indictment.

In consequence of the presentment made by the Grand Jury of yesterday, Jacques Robitaille, of Detroit, gentleman, Michael Rawleigh, and David Clark, Sargeant Charles McIntyre and Michael Lary, private, and Robert Brown, drummer, all of His Majesty's Fifth Regiment of Foot, were duly sworn to give evidence before the Grand Jury touching the murder of an Indian called Wawanisse. On the same account Francois Fleurie was sworn to give evidence before the Grand Jury touching the murder of Albert Graverot, late of Michilimackinac, trader.

Adjourned till to-morrow morning at ten of the clock.

W. ROE, *C. C. O. and T.*

Court of Oyer and Terminer and General Gaol Delivery, holden in the Parish of L'Assomption, in and for the said district, the fifth day of September, 1792, agreeable to adjournment.

Present: William Dummer Powell, Esquire, and his fellows.

Opened the Court after the usual proclamation.

The Grand Jury attended as of yesterday, and informed the Court that the presence of the two persons confined in gaol as accessories to the murder of Albert Graverot, would be necessary to enable them to accomplish an intended presentment.

The Sheriff returned a *cipi corpus* on the writ issued yesterday against Louis Roy, and upon motion of the Clerk the prisoner was set to the bar and pleaded not guilty, for his trial put himself on God and his country.

The prisoner consents to his trial coming on to-morrow morning at ten of the clock.

The Clerk presented to the Grand Jury a bill against Josiah Cutan, of Detroit, laborer, for burglary, which they found a true bill.

Adjourned till to-morrow morning at ten of the clock.

W. ROE, *C.C.O. and T.*

Court of Oyer and Terminer and General Gaol Delivery, holden in the Parish of L'Assomption, in and for the said district, this sixth day of September, agreeable to adjournment.

Issued and delivered warrant to the sheriff on this order this 4th Sept., '92.
W. R., C.C.

PROVINCE OF
UPPER CANADA.
DISTRICT OF
HESSE.
5 September, 1792.

PROVINCE OF
UPPER CANADA.
DISTRICT OF
HESSE.
6 September, 1792.

Present: Wm. Dummer Powell, Esquire, and his fellows:

Opened the Court after the usual proclamation.

The Sheriff returned a venire, and on motion of the Clerk, Louis Roy was set to the bar in order to his trial agreeable to the rule of yesterday.

Mr. Hugh Holmes, of Detroit, schoolmaster, was duly sworn to interpret between the Court, jury and prisoner.

The prisoner was informed of his right to challenge, and the following jurors were sworn, to wit:—

1. Claude Reaume, of L'Assomption, yeoman.
2. John Welch, of St. Anne, cooper.
3. Joseph Bazinett, of L'Assomption, yeoman.
4. Thomas Cox, of St. Anne, innkeeper.
5. Henry Botsford, of St. Anne, joiner.
6. Alexis Delisle, of St. Anne, yeoman.
7. John Dodymead, of St. Anne, innkeeper.
8. William Sorell, of St. Anne, innkeeper.
9. Jacques Campeau, of St. Anne, yeoman.
10. Joshua Cornwall, of St. Anne, shoemaker.
11. Augustin Lafoy, of St. Anne, armourer.
12. Joseph Edge, of St. Anne, blacksmith.

The above persons being duly sworn, the Clerk opened the prosecution, which was translated by the Interpreter to the French part of the jury.

FELIX MERTIZ, of Detroit, labourer, being duly sworn to give evidence in this cause, saith,—

That at Saguinaw on the eighth day of April last, about the hour of eleven in the forenoon, the witness, the deceased, and Antoine Prevost, were diverting themselves by throwing sticks, stones, and mud at each other, that the deceased had a stick in his hand following the prisoner, saying I will make you fly, that in running from the deceased, the prisoner caught up a stone and, turning around, threw at the deceased, who was standing still, the prisoner calling out, "Take care." The deceased ran forward and held up his hand against the stone, but whether the stone struck his hand or not cannot say. The deceased turned round, retreated about fifteen steps to where they were, and sat down, when the prisoner came up to him and asked where he was hurt, and the deceased said he did not know he was hurt, but thought he was sick from drinking. They took him to Mr. Gouin's house, and put him on a bed; he vomited a little and expired in a few minutes.

Q. by the Jury: Whether after the death of the deceased the prisoner attempted to make his escape.

Ans.: No. On the contrary, he wished to be sent to Detroit.

By the Court: Was either the prisoner or deceased in liquor when the accident happened?

Ans.: The prisoner was not, but the deceased was a little intoxicated. That he knows of no misunderstanding between them. That the stone was not thrown immediately at the deceased, but elevated in the air above his head.

The prisoner asked the witness no questions.

W. R.

ANTOINE PREVOST, of Detroit, labourer, was next duly sworn, who declares and says:

That on Easter Day last himself, the prisoner, and the deceased, were diverting themselves by throwing stones, sticks, and earth at each other. That the deceased was pursuing the prisoner with a stick in his hand, when the latter stopped and picked up a stone, which he threw at the deceased, and which the deceased received with his two hands, but did not perceive it strike him anywhere else. Knows of no quarrel happening between the prisoner and the deceased. Here the witness was so weak that he could not proceed.

JONATHAN SCHIEFFELIN, of Detroit, gentleman, being duly sworn, declares and says:

That on Easter day, the 8th day of April last, about dinner time, he observed several people throwing stones and sticks at each other, and a short time after Pierre Morin came into the house and told him that one of them was struck with a stone, which had done his business. That witness examined the corpse of the deceased and found one of his left ribs broke and a bruise on his breast. That witness, by desire of Major Smith and the Coroner of the District, held an inquest on the corpse—who were of opinion that the death of the deceased was caused by the stroke of the stone without any malice. That the stone now shown to the jury was delivered to witness by Felix Mettiz, who swore before the inquest that it was the same stone that was thrown at and struck the deceased, but could not say where.

The Court re-called Felix Mettiz, and upon the oath he had already taken, said: That the stone now shown to the jury is the same stone that was thrown at the deceased.

The evidence for the Crown being now closed, the prisoner was called upon to make his defence, who says:

That whatever happened was merely accidental, as he had neither pique nor resentment against the deceased, and that, had not the deceased run forward to meet the stone, it would not have reached him, as at the time of throwing it the deceased was at the distance of about sixty yards

from him. That he does not think it hurt the deceased, as he observed the stone rolling behind him. That on the deceased sitting down, the prisoner asked him if he was struck, who answered he believed not, but thought his weakness proceeded from the effect of liquor. That he offered him the use of his bed, which the deceased immediately accepted.

The prisoner prayed that Felix Mettiz might be heard as an evidence on his behalf, who was duly sworn to answer any questions on his behalf.

By the Prisoner: Do you think that the stone thrown at the deceased could have struck him had he remained where he was standing at the time of throwing?

Ans.: No, as he was at a distance of about sixty yards.

JONATHAN SCHIEFFELIN, of Detroit, gentleman, was next duly sworn to answer any questions that might be proposed to him on the part of the prisoner.

By the Prisoner: Have you known me at any time to be a quarrelsome man, or given to liquor?

Ans.: No. I have always known you to be a quiet, peaceable man, and never heard you wished to injure your comrades.

The testimony on the part of the Crown, and of the prisoner, being now closed, the Court proceeded to give the following charge:—

Gentlemen:

The prisoner at the bar stands charged upon the oath of the Grand Jury with the felonious murder of Francis Lalonde. From the evidence it appears that on the day laid in the indictment, the prisoner with the deceased, Mettiz, and Prevost, had amused themselves with drinking in good fellowship. That when they went out of the house the prisoner was sober, and the deceased somewhat intoxicated. That playing together rudely throwing at each other sticks, stones, earth, etc., the prisoner without any malice took up the stone shown to you and threw it towards the deceased, at that moment still out of the probable reach of the stone, the prisoner at the same time crying out "Take care or catch." That seeing the stone thrown, the deceased stepped forward and held out his hands to catch the stone, which struck his hand and fell down and rolled behind him. That the deceased retreated a few steps in apparent pain, when the prisoner ran up to him inquiring where he was hurt, and upon the deceased saying that he did not know, but felt as if sick from drinking strong liquor, the prisoner offered him his bed and the others helped to carry him to it, where he vomited for a few minutes and expired before a man could get from the house to bleed him. It appears that one rib of the

left side was broken and the flesh bruised. - There appears no malice or inclination to mischief—such is the fact of the homicide. The death of a man by the hand of another is in law subject to four distinctions. It is justifiable where done in the execution of duty. It is excusable in cases of self-defence or misfortune where there was no malice or neglect. It is manslaughter where the means used to accomplish the homicide were not unwarrantable or inconsiderate without malice, or where the natural infirmity of our nature affords excuse from sudden passion on sufficient provocation. Murder is where there is a malignant predetermined resolution to do mischief and death ensues. You, Gentlemen of the Jury, are to take into consideration the evidence before you, and, weighing it maturely, to determine of which of these classes of homicide the prisoner is guilty. It is not justifiable. It is not murder. If you think the recreation described to you innocent in itself, and that the fatal accident proceeded not from a blamable inattention to the safety of his comrades in the prosecution of their coarse play, you will find the fact to have been by misfortune. If, on the contrary, judging by the weight of the stone, the force and direction given to it to break a rib at such a distance, you should think the accident proceeded from a culpable inattention, though free from all design, you will find the prisoner guilty of manslaughter. By your verdict you are to discharge your own consciences.

The jury being returned into court for their verdict say :

That Louis Roy, the prisoner at the Bar, is not guilty of murder, but of excusable homicide by misfortune, and so say they all, and that he did not fly for it, to their knowledge.

The Court orders the prisoner be remanded to the custody of the Sheriff.

The Grand Jury found bill against Josiah Cutan for burglary and felony. On motion of the Clerk, the prisoner was set to the Bar and arraigned. Pleaded not guilty. Puts himself on God and his Country. On motion of the Clerk and by consent of the prisoner it is ordered that the trial of this issue be brought forward to-morrow morning at ten of the clock, and that a venire do issue, returnable at that period.

The Grand Jury for the District filed three presentments, exhibited this day, A, B and C, which the Court informed them should be transmitted to the superior powers.

Adjourned till to-morrow at the hour of ten in the forenoon.

W. ROE, C.C.O. and T.

PROVINCE OF
UPPER CANADA.
DISTRICT OF
HESSE.
7 September, 1792.

Court of Oyer and Terminer and General Gaol Delivery. holden at L'Assomption, in and for the said District of Hesse, on Friday, the seventh day of September, 1792, pursuant to adjournment.

Present: Wm. Dummer Powell, Esquire, and his fellows.

Opened the court after the usual proclamation.

The Sheriff returned the venire, and on motion of the Clerk,

JOSIAH CUTAN was set to the bar in order to his trial, agreeable to the rule of yesterday.

The prisoner was informed of his right to challenge, and the following persons were duly sworn to pass upon his trial, to wit:

1. Amable St. Côme, of St. Anne, armourer.
2. George Chislestul, of St. Anne, shoemaker.
3. Isaac Williams, of St. Anne, trader.
4. Matthew Dalson, of St. Anne, innkeeper.
5. Robert Gouin, of St. Anne, taylor.
6. Hugh Holmes, of St. Anne, schoolmaster.
7. John Welch, of St. Anne, cooper.
8. Thos. Cox, of St. Anne, innkeeper.
9. Henry Botsford, of St. Anne, joiner.
10. Wm. Sorrel, of St. Anne, innkeeper.
11. Joshua Cornwall, of St. Anne, shoemaker.
12. Joseph Edge, of St. Anne, blacksmith.

The foregoing twelve persons being duly sworn, the Clerk opened the prosecution and called on

LOUIS CAMPEAU, who after being duly sworn declares and says:

That sometime last Fall, cannot exactly recollect the period, about midnight, Joseph Campeau, of St. Anne, trader, came to the house where witness lived and requested that he would assist him in apprehending a thief that had been stealing in his shop, that accordingly witness and said Campeau set off and overtook the prisoner behind Mr. Robert McDougall's, at whose house they stopped, and requested the assistance of one Pilon, who immediately took charge of the prisoner with the said Joseph Campeau, while witness returned to the shop to see if there were no other robbers remaining, and on his way thither, about one acre and a half from the said house or shop, saw a bag lying containing some smoked skins and two kegs of rum and a bundle of peltry, but cannot say of what quality. That on the prisoner being brought back to the shop, he was asked if he had stole anything else, which he answered in the negative, but acknowledged to have taken the above enumerated articles. That he (the witness) does not understand English, but learned this from Mr. Jos. Cam-

peau, who interpreted it to him. That the said Jos. Campeau frequently slept in the said store or shop where the robbery was committed.

Q. by Jury: Did the prisoner attempt to make his escape?

Ans.: I do not know.

Q. by the Jury: Was there any property found on the prisoner?

Ans.: No.

By the Court: Did you find anything in the shop which the prisoner acknowledged to be his property?

Ans.: Yes, an adze, which he acknowledged to be the instrument with which he made his entry into the said store.

By the Court: Where did the robbery happen?

Ans.: On the north side of the River Detroit, about half a league above the Fort, in a house the property of Mr. Jacques Campeau, leased by Mr. Joseph Campeau, and that the goods therein were the property of the said Joseph.

By the Court: Through what part of the said shop did the prisoner make his entrance?

Ans.: By the door, which he forced open with the said adze. That he saw the marks of violence by which he effected the same.

By the Court: Is there any chimney in the said shop?

Ans.: That he has been there since the said robbery was committed and saw the chimney. Knows M. Jos. Campeau; has slept there since. That the prisoner attempted to resist being brought forward.

The prisoner had no questions to propose to this witness.

RALPH PILON, of Detroit, labourer, was next duly sworn, who declares and says:

That about the eighteenth day of October last he resided at Mr. Robt. McDougall's, and about midnight was called up by Mr. Jos. Campeau to assist in conducting a negro, which the witness recognised to be the prisoner at the bar, who they accordingly conducted to the house of Mr. Jacques Campeau. That he went up into the garret of Mr. Joseph Campeau's store, and observed the different articles of merchandise there, very much deranged. That on his way to the said house he observed a bag lying on the road, which on being brought to the house contained two kegs of rum, and other articles, which he does not recollect.

The Clerk here moved to read the voluntary confession of the prisoner taken before John Askin and Geo. Sharp, Esquires, two of His Majesty's Justices of the

Peace for this district, which was duly proven on oath by the said John Askin, Esq., to have been voluntarily taken before him, without any threats or menace being used to obtain the same. Read the same to the jury.

JACQUES CAMPEAU, of Detroit, trader, being duly sworn, declares and says: That for about these three years past he has leased a building to Mr. Jos. Campeau, which he occupies as a shop. That when he did not sleep there himself he generally left some person to take charge thereof.

The prisoner was here called upon to make his defence, who says that true it is, Mr. Campeau took him prisoner; that he does not understand French, but that in answer to any questions he proposed to him, he may have said yes.

The evidence on the part of the prosecution being now closed, and the prisoner having no witnesses to call, the Court delivered the following charge to the jury:—

Gentlemen of the Jury:

The offence charged in the indictment upon the prisoner at the bar is burglary, that is to say, a breaking of a dwelling-house by night with intent to commit a felony. It is proved to you that on the night of the 18th of October last the prisoner about midnight was found in the road near Mr. Campeau's house. That upon alarm of noise several persons assembled and found the store of Mr. Jos. Campeau's broke open. They found a carpenter's adze near it, the supposed instrument of the violence, and merchandise and liquors were found near the store, but not proved to have been the property of Mr. Campeau—but the prisoner's voluntary confession upon examination before two justices proved in evidence to you, shows beyond a doubt that he was guilty of the burglary, that he forced the door with the adze, and took away the articles described. It remains only for the Court to inform you, that by a dwelling-house alone being the subject of the aggravated offence of burglary, the law meant to secure to the subject the peaceful indulgence of rest by night, and that to give to every house the character of a dwelling-house, it is enough that the owner, or some one having charge of it, sleeps in the house usually, although he may board elsewhere. The being absent from the house on the night of the burglary does not diminish the offence, if you shall be satisfied that it was not abandoned, and one of the witnesses swears, that before and since the burglary Joseph Campeau usually slept in it. You will consider the evidence under this view of the offence, and discharge your consciences.

The jury being returned into court for their verdict, say:

That Josiah Cutan, the prisoner at the bar, is guilty of the burglary and felony, whereof he stands indicted, and so they say all. That he had neither goods, chattels, land or tenement, at the time of the said burglary and felony committed, or at any time since, nor did he fly for it, to their knowledge.

The Court remanded the prisoner to the custody of the Sheriff.

Adjourned till Monday next at the hour of ten in the forenoon.

W. ROE, *C.C.O. and T.*

Court of Oyer and Terminer and General Gaol Delivery, holden at L'Assomption, in and for the said District, on Monday, the tenth day of Sept., 1792, pursuant to adjournment.

Present: Wm. Dummer Powell, Esquire, and his fellows.

Opened the Court after the usual proclamation.

Pursuant to the request of the Grand Jury, it is ordered that George Sharp, Esq., and Chevalier De Celoron, gentleman, both of the Parish of St. Anne, be fined in the sum of forty shillings, currency, each for non-attendance as Grand Jurors agreeable to the return of the Sheriff.

A fine of twenty shillings is set on James Urquhart, of L'Assomption, merchant, Laurent Parent, of the same place, yeoman, and Antoine Beaubien, of St. Anne, gentleman, for their non-attendance as Petty Jurors.

A fine of twenty shillings is set on Pierre L'Etourneau and André Peltier, of L'Assomption, yeoman, for their non-attendance as Peace Officers—and that these several fines be estreated.

The Clerk having stated to the Court the verdict rendered against Josiah Cutan, for burglary the seventh inst., moved that the said Josiah Cutan might be set to the bar in order to judgment being pronounced against him, which was done accordingly. When he was asked by the Clerk if he had aught to say why the sentence of the law should not be pronounced against him, who answered that he had not. On motion by the Clerk for judgment, the Court pronounced the following sentence.

Josiah Cutan,—you have been found guilty by the verdict of twelve good and impartial men upon the plain evidence of your own voluntary confession, in addition to other proof, of having committed on the eighteenth of October last a burglary in the house of Jos. Campeau. This crime is so much more atrocious and alarming to society, as it is committed by night, when the world is at repose, and that it cannot be guarded against without the

PROVINCE OF
UPPER CANADA.
DISTRICT OF
HESSE.
10 September, 1792.

same precautions which are used against the wild beasts of the forest, who, like you, go prowling about by night for their prey. A member so hurtful to the peace of society, no good laws will permit to continue in it, and the Court in obedience to the law has imposed upon it the painful duty of pronouncing its sentence, which is that you be taken from hence to the gaol from whence you came, and from thence to the place of execution, where you are to be hanged by the neck until you are dead. And the Lord have mercy upon your soul.

W. ROE, *C.C.O. and T.*

COURT OF COMMON PLEAS.

TUESDAY, the 17th MARCH, 1789.

Present: The Honourable Richard Cartwright, Neil McLean, and James Clark, Esquires.

KINGSTON.
MARCH TERM.
1789.

John Ferguson
vs.
Philip Dorland.

The Sheriff has returned that he summoned the defendant.

The plaintiff appears in person and files his declaration, and the defendant also appears in person.

The defendant prays that Peter Vanalstine may plead this cause for him.

It is ordered that the defendant do plead for himself.

The defendant prays that this cause may be tried to-morrow.

It is ordered by the Court that the defendant do plead to-morrow.

John Francis
vs.
James Richardson.

The Sheriff has returned that he summoned the defendant.

The plaintiff appears in person and filed his declaration. The defendant also appears in person, and prays that this cause may be tried on a future day.

It is ordered by the Court that this cause may be tried on Friday next the 19th inst.

John Fanier
vs.
Richard Cartwright, Esq.

The Sheriff returned that he has summoned the defendant.

The plaintiff appears in person, but has not filed his declaration.

The Court does order that this cause may be tried on Friday next the 20th inst.

The Court adjourned until to-morrow morning at 10 o'clock.

WEDNESDAY, 18th MARCH.

The Court met pursuant to adjournment.

Present: The three Judges.

The defendant appears pursuant to order of Court and says that the said obligation mentioned in said declaration, sets forth that the accounts between the parties were to be further examined in order to make a final settlement, and further that although he should have received that quantity of provisions mentioned in the aforesaid obligation from the plaintiff, he does not think himself accountable to the plaintiff for such. The plaintiff exhibited the said obligation in court, by which it appears that the defendant has made himself accountable for the quantity of provisions he is charged with. The plaintiff further informs the Court he had in the course of a month after he received the said obligation, called on the defendant to make a final settlement, at which time the defendant acknowledged his account to be just; excepting one barrel beef, overcharged him, from which he is credited as appears from his account.

John Ferguson
vs.
Phillip Dorland.

Peter Vanalstine, sworn as an evidence in this cause, says that he was informed that the defendant had given a note to the plaintiff for a quantity of provisions, and that he was present at the time the plaintiff requested the defendant to settle the same with notes payable by instalments, which the defendant would not agree to; further, that he knew not of any settlement between the parties.

Thomas Dorland, sworn as an evidence in this cause, says he was present at the time the plaintiff demanded payment of said note from the defendant. That the defendant answered he did not think himself indebted to the plaintiff, but if it was so, he was not able to pay him at that time.

The plaintiff informs the Court that Susannah Vanderbogat was subpoenaed as an evidence on this cause, but her being at a distance and unable to travel has prevented her appearing. Therefore prays that her deposition on oath may be taken.

The Court does order that the deposition of the said Susannah Vanderbogat may be taken, and that they shall take some time to consider further of this cause.

The Court adjourn to to-morrow at ten o'clock.

THURSDAY, 19th MARCH.

The Court met pursuant to adjournment.
Present: The three Judges.

John Fanier
vs.
James Richardson.

Brought on pursuant to order of Court on Tuesday last, the 17th inst.

The defendant appears and says that having been employed by Mr. R. Cartwright to oversee and superintend the works carrying on at Navy Island. That on the sixth day of October last he observed to John Fanier that he and his party were neglecting their work. That Fanier was much intoxicated with liquor and assaulted the defendant with very abusive language, tore part of his shirt off, upon which the defendant in his own defence struck the plaintiff.

The plaintiff says that on the day aforesaid, while he was at dinner about one o'clock, the defendant came to the house, called him "puppy," and acknowledged he was not at work. The plaintiff answered that it was none of his business, upon which the defendant took the plaintiff by the ear and pushed him over a bench. In his attempting to rise the defendant struck him on the face, he then having hold of the defendant's shirt, tore part of it. Then defendant left him and went out of doors. The plaintiff followed, and in going out the defendant struck him on the shoulder with a stick and attempted to strike again but was prevented by some people present.

The parties having been fully heard this day, the Court not being yet determined of giving their judgment of and concerning the premises, it is considered that the same be taken into deliberation.

The Court adjourned to to-morrow at ten o'clock.

FRIDAY, 20th MARCH.

The Court met pursuant to adjournment.
Present: The three Judges.

John Fanier
vs.
James Richardson.

The Court having, upon mature deliberation, considered the arguments of the parties, and having also read and considered the pleadings in this cause, likewise the evidence produced by the plaintiff, do order and adjudge that the plaintiff do recover against the defendant the sum of five pounds currency, with costs of suit taxed at four pounds eighteen shillings.

The plaintiff appears in person and filed his declaration. The defendant also appears and from an account exhibited in court that the plaintiff has received a considerable sum since the account recorded, the balance of which is demanded, and further that the amount retained in the hands of the defendant is in consequence of work done by the plaintiff being insufficient and not done in a workman-like manner, which appears from a certificate of said work exhibited by the defendant; and, further, the defendant says that he has frequently told the plaintiff that when the said work was completed in a sufficient manner any sums due him should be immediately paid.

John Fanier
vs
Richard Cartwright.

The plaintiff acknowledges the charges made by the defendant and says that the subscribers to the said certificate were not upon oath when they examined the work therein mentioned, the plaintiff prays that their depositions may be taken, as their situation renders it very inconvenient to subpoena them to appear.

The Court does order that the depositions may be taken as prayed, and that judgment may be given concerning the premises on Tuesday next, the 24th inst.

The Court adjourned to Monday next.

MONDAY, 23rd MARCH.

The Court met pursuant to adjournment.

Present: Richard Cartwright and Neil McLean, Esquires.

The Court adjourned until to-morrow at ten o'clock.

TUESDAY, 24th MARCH, 1789.

The Court met pursuant to adjournment.

Present: Richard Cartwright and Neil McLean, Esquires.

From the absence of James Clark, one of the judges, the Court does consider that the cause between Richard Cartwright and John Fanier cannot be proceeded on this day, but that it be tried on Thursday next.

The Court does adjourn to Thursday next.

THURSDAY, 26th MARCH.

The Court met pursuant to adjournment.

Present: The three Judges.

The Court having upon mature deliberation considered the arguments of the parties, and having also read and

John Ferguson
vs
Phil. Dorland.

considered the readings in this cause, likewise the evidence produced by the respective parties, do order and adjudge that the plaintiff do recover against the defendant the sum of one hundred and seventy-one pounds, eighteen shillings and twopence farthing, H. currency, together with costs taxed at six pounds, seventeen shillings.

John Fanier
vs.
Rich'd Cartwright.

The defendant appears and says that he has used every means in his power to procure the evidence necessary to support his plea, but from the precarious situation of the ice at this season it was found impracticable to procure this evidence, therefore prays that this cause may be tried at the next term.

The Court does order that this cause may be tried on the second day of next term.

The Court does adjourn until Tuesday next.

TUESDAY, 31st MARCH.

The Court met pursuant to adjournment.

Present: Richard Cartwright and Neil McLean, Esquires.

The Court does adjourn until Wednesday, the first day of July next.

JULY TERM.

WEDNESDAY, THE FIRST DAY OF JULY.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Junr., Neil McLean, and James Clark, Esquires.

Rich'd Cartwright
vs.
Alex'r Grant.

The Sheriff has returned that he has summoned the defendant.

The plaintiff appears in person and filed his declaration. The defendant being duly called made default.

The plaintiff prays that that default may be recorded. It is ordered that the default be recorded.

Thomas Sparham
vs.
John Ferguson.

The Sheriff has returned that he has summoned the defendant.

The plaintiff appears in person and filed his declaration. The defendant being called, H. Clark appears for the defendant, and prays that this cause may be tried next Wednesday as prayed.

Chris'r Georgeon
vs.
Haselton Spencer.

The Sheriff returned that he has summoned the defendant.

The plaintiff appears in person. The defendant also appears.

The plaintiff prays that a venire may issue for to try this cause.

It is ordered by consent of the parties that this cause be tried by jury on Saturday next, the 4th inst., and that a venire do issue returnable that day.

The Sheriff returned that he has summoned the defendant.

The plaintiff appears in person and prays that this cause may also be tried by jury.

The defendant appears, that this cause may be tried by the Judges of this court.

It is ordered that a venire shall issue for the trial of this cause, returnable on Monday next, the sixth inst.

The Sheriff returns that he has summoned the defendant.

Chris'r Georgeon
vs.
John Howard.

The plaintiff appears and files his declaration.

The defendant being duly called made default.

The plaintiff prays that default be recorded.

Ordered that default be recorded as prayed.

Alex'r Clark
vs.
Thomas James.

The Sheriff returned that he has summoned the defendant. That he has also taken on Saisie to him directed as belonging to the said Martin Butler, sixteen thousand butt staves, forty pieces timber, three iron pots, one cross-cut saw, one pair bull rings, four bushels potatoes planted, one wooden canoe, three axes, which articles remain in his custody until a further order of the Court.

Thomas Stratton
vs.
Martin Butler.

The defendant being called made default.

The Sheriff returned that he could not summon the defendant but by Saisie, and has taken as belonging to the defendant two hens, one milk cow, which remain in his hands until the further order of the Court.

The defendant being called made default. Gilbert James appears and says that the said cow and hens are his property, which he is ready to prove.

The plaintiff appears in person and declares that he can prove the cattle to be the property of the defendant. The Court does order that this cause be tried to-morrow.

Alex'r Clark
vs.
Thomas James.

The Sheriff returned that he has summoned the defendant.

The plaintiff appears in person and filed his declaration. The defendant also appears in person and prays that this cause may be tried by jury.

Alex'r Simson
vs.
Barbs. Day.

It is ordered by consent of the parties that a venire may issue returnable next Tuesday, the 7th inst.

Robert Macauley
vs.
Jno. Taylor.

The Sheriff returned that he has summoned the defendant.

The plaintiff appears in person. The defendant also appears in person and prays that this cause may be tried to-morrow.

It is ordered that this cause shall be tried to-morrow, as prayed.

Mat'w Forrest
vs.
John Howell.

The Sheriff returned that he has summoned the defendant.

The plaintiff does not appear to prosecute this action.

The Court does order that the defendant be dismissed with costs.

Thos. Stratton
vs.
Martin Butler.

The defendant appears and requests that the default may be taken off. It is ordered that the default be taken off on paying costs.

Charles Bennett appears for himself and Samuel Sherwood and claims the sundry articles seized for the plaintiff to be his property, which he is ready to prove.

The plaintiff also declares that he is ready to prove the contrary.

The Court does order that the said proving may be taken on Friday next, the 3rd inst.

John Ferguson
vs.
Philip Dorland.

The Sheriff returned that he has duly served the execution to him direct on judgment obtained in this cause the last term, and that he has taken in custody all the moveables belonging to the defendant, the whole of which are claimed by Thos. Dorland as his property.

The Court order that Thomas Dorland do appear at this court to-morrow and that he does prove the said moveables to be his property.

John Fanier
vs.
Rich'd Cartwright.
(From last term.)

The plaintiff appears in person. The defendant also appears.

The Court does order that this cause may be tried to-morrow.

The Court adjourn until to-morrow at ten o'clock.

The Court met pursuant to adjournment.

Present: James Clark and Neil McLean, Esquires.

The defendant appears and has filed the deposition upon oath of two of the parties who had subscribed to the survey held on the work performed by the plaintiff, by which it appears that the work was not done in a sufficient manner. The defendant further says that he has been under the necessity of employing other workmen to perform and compleat the said work on board the "Lady Dorchester," and that he is ready to pay any balance of account that may yet remain in his hands.

John Fanier
vs.
Rich'd Cartwright.

The plaintiff also appears, but has nothing further to say in support of this cause.

The Court upon mature deliberation considered the arguments of the parties, and having also read and considered the pleadings in this cause, likewise the evidence produced, do order and adjudge that the defendant be dismissed and that the plaintiff do pay costs taxed at four pounds, eleven shillings and sixpence.

The Sheriff returned that Thomas Dorland has entered a caveat in his office claiming the property seized by him as per schedule annexed to the execution to him directed the 10th day of April last.

Jno. Ferguson
vs.
Phillip Dorland.

Thomas Dorland being called to prove his said claim produced in court an instrument in writing in the nature of a mortgage on the principal part of the articles seized on said execution. But the legality of it does not appear to the Court sufficient to be admitted as a lawful claim to the said property.

The plaintiff appears pursuant to order of Court the first inst. and exhibited to the Court an account against the defendant for the sum specified in his declaration.

Alex'r Clark
vs.
Thomas James.

Gilbert James appears and acknowledges that he has no claim or title to the cattle seized by virtue of saisie on the property of Thoms. James.

The plaintiff appears pursuant to order of yesterday and exhibits a promissory note by defendant, which appears to be unpaid. The defendant also appears and prays that this cause may be tried on Monday next, as he has lost an account necessary to prove the payment of the note. It is ordered at the request of the defendant that this cause be tried on Monday next, the 6th inst.

Rob't McAulay
vs.
John Taylor.

The Court adjourned until to-morrow at 10 o'clock.

FRIDAY, 3rd JULY, 1789.

The Court met pursuant to adjournment.
Present: The three Judges.

Thomas Stratton
vs.
Martin Butler.

The plaintiff appears pursuant to rule of Wednesday, the first inst., and filed four exhibits, and further declares that he was obliged to leave the defendant's employ for want of a sufficiency of provision to support him at work, and that others did also (on that account) leave the defendant at the same time he did; which he is ready to prove and prays that the evidence of James Dryburgh may be taken. It is ordered on motion of the plaintiff that James Dryburgh be called and sworn, as evidence in this cause. The defendant appears and says he is not indebted to the plaintiff for wages, as they did not become due until the plaintiff should arrive at Quebec with a raft of timber and staves, and that the plaintiff had no just cause to leave his employ as a stave-cutter, by which he has sustained material damages; and, further, that the plaintiff always had a sufficiency of provision allowed him while in his employ, which he is ready to prove, and prays that the evidence of Charles Bennett may be taken.

It is ordered, on motion of the defendant, that Charles Bennett be called and sworn as prayed. The deposition of Charles Bennett is taken as ordered.

The parties having been fully heard this day and evidence taken for them, the Court not being yet determined of giving their judgment of and concerning the premises, it is considered that the same be taken into deliberation.

The Court adjourn until to-morrow at 10 o'clock.

SATURDAY, 4th JULY, 1789.

The Court met pursuant to adjournment.
Present: The three Judges.

Thomas Stratton
vs.
Martin Butler.

The Court having duly considered the evidence in this cause are of opinion that the plaintiff's claim ought not to be allowed and that the defendant be dismissed with costs, taxed at six pounds eleven shillings. Their grounds for this opinion are:—

1st: That the plaintiff having entered into an agreement with the defendant violated this agreement and thereby injured the defendant in a greater degree than the amount of the plaintiff's wages, which the Court think on that account to be forfeited. Nor does it appear

that the plea of necessity set up by the plaintiff for his breach of contract is at all supported, as from being equally concerned with the defendant but a few days before in the business he engaged in, he could not fail to be well acquainted with his resources for provision, besides several other persons engaged with the defendant continued at work with him at the time the plaintiff alleges they were starving, and further, though the plaintiff was urged by Mr. Thomas Bennet to his work, the plaintiff assured him he would if he could persuade the men that came with him to do so likewise. It appears he did not nor intended to do it. The plea of security for wages the Court consider as perfect negatory, they being already allowed by the laws a preference to all other claims.

The plaintiff's charge for linnen shirt is unjust, as they were bought from Mess. Sherwood and Bennett and charged by them to the defendant. The remaining articles charged by the plaintiff in this account appear to have been contracted on their joint account and the defendant not liable to pay the plaintiff for them till he produces a discharge from the person of whom they bought.

The Sheriff returned the venire.

The plaintiff appears pursuant to order of Wednesday, the first inst. The defendant also appears.

The plaintiff demands of the defendant the sum of twenty pounds for damages in not receiving cash that was their due on account to purchase wheat, and for this he puts himself on the country.

The defendant acknowledges the sum of seven pounds, five shillings and threepence to be due the plaintiff and alleges that he has made frequent efforts to procure cash to pay the plaintiff, but found it totally out of his power to procure. That he had frequently made several offers of other species of payment, and, further, that he had this day offered him that sum in cash, which the plaintiff refused, and as the defendant does not think the plaintiff entitled to more he also puts himself on the country.

Christopher
Georgeson
vs.
Haselton Spencer.

The jury impannelled and sworn to try this cause were:

- | | |
|------------------|----------------------|
| 1. James Robins. | 7. Samuel Ainsley. |
| 2. Halon Knight. | 8. Richard Campbell. |
| 3. Arthur Orser. | 9. James Hawley. |
| 4. Thomas Cook. | 10. James Pritchard. |
| 5. Jno. Duncan. | 11. Charles Bennett. |
| 6. Phil. Pember. | 12. Alexander Clark. |

The jury being charged to say and declare the truth of the matter contained in the said declaration, and having

examined the pleading and exhibits filed in this cause, withdraw to consider of their verdict, and the said jury having returned into court and being now called over, say by James Robins, their foreman, that the defendant is directed to pay the sum of seven pounds, five shillings and threepence, with fifteen shillings costs, supposed to be the costs attending a suit for said sum on the weekly court.

The Court having considered the verdict, do order that the defendant shall pay the said sum as awarded by the jury, and that the plaintiff pay the remaining costs of three pounds nineteen shillings and threepence.

The Court adjourn to Monday next, the sixth inst.

MONDAY, 6th JULY.

The Court met pursuant to adjournment.

Present: Richard Cartwright and Neil McLean, Esquires.

Christopher
Georgeon
vs.
John Howard.

The plaintiff appears pursuant to order of Wednesday last, the first inst., and declares that the defendant in the months of July and December, in the year 1787, did promise and agree to deliver the plaintiff fifty bushels of good and merchantable wheat before the first day of March following. In consideration of which the plaintiff has delivered the defendant sundry merchandise, etc., in full for the aforesaid wheat; and, further, that as the defendant did not furnish the quantity of wheat at the time above mentioned, he did in the fall of '88 promise to compleat the quantity already agreed for.

The defendant also appears and acknowledges to have promised the plaintiff some wheat, but denies having agreed for any certain quantity, and that he has delivered the plaintiff wheat at different times; further, that in the fall of 1788, he duly promised him wheat conditionally that, if he had it to spare, he would let the plaintiff have it.

The plaintiff in his replication says that the quantity specified in his declaration was positively agreed for, likewise that the defendant had agreed in the fall of '88 to furnish the deficiency, which he is ready to prove, and accordingly puts himself on the country. The defendant doth do likewise.

The Sheriff returned the venire.

The jury empannelled and sworn to try this issue for this cause were:—

- | | |
|--------------------|-------------------|
| 1. Mic'l. Dedrick. | 3. Peter Wartman. |
| 2. John Mosier. | 4. Geo. Harper. |

- | | |
|-------------------|--------------------|
| 5. Wm. Ashley. | 9. Aaron Lewer. |
| 6. Jno. Fanis. | 10. John Warner. |
| 7. Thos. Bennett. | 11. Geo. Gallaway. |
| 8. John Most. | 12. John Wartman. |

Who being charged to say and declare the truth of the matter contained in the said declaration, and having examined the pleading and exhibits filed in this cause, and heard the evidence on both sides, withdrew to consider of their verdict, and the said jury having returned into court and being now called over, say by George Gallaway, their foreman, that the plaintiff shall allow the defendant at the rate of 4s. 6d. per bushel for wheat, 3s. 6d. per bushel for rye, 3s. 6d. per bushel for corn, 2s. 6d. per bushel for oats, 2s. per bushel for potatoes, for the quantity he has accounted, and that the defendant shall pay the plaintiff the sum of seven pounds, seventeen shillings and threepence halfpenny, being the balance of his account, with five pounds damages, for expenses incurred by the plaintiff at different times going for wheat and potatoes promised him.

The Court having considered the verdict of the jury do adjudge that the defendant do pay the plaintiff the sum of twelve pounds, seventeen shillings and threepence halfpenny, with costs of suit, taxed at nine pounds, eight shillings and fivepence currency.

The Court adjourn until to-morrow at ten o'clock.

The defendant appeared according to rule of Court on Thursday last and produces an account against the said Thomas Fitsimmons.

Robt. Macaulay
vs.
John Taylor.

The plaintiff also appears and informs the Court that the said promissory note has been often presented to the defendant for payment, and that the defendant never did at any time previous to his being summoned mention any account he had against the said Thomas Fitsimmons.

The Court are of opinion that the defendant shall pay the plaintiff the said sum of twelve pounds with lawful interest and costs of this suit, taxed at two pounds, nineteen shillings and sevenpence.

The Court adjourn to to-morrow at ten o'clock.

TUESDAY, 7th JULY, 1789.

The Court met pursuant to adjournment.

Present: The three Judges.

The plaintiff appears pursuant to order of the first inst. and declares that the defendant is justly indebted to him in

Alex'r Simson
vs.
Earbs. Day.

the sum of twenty pounds for sundries furnished him on account and for labour done for the defendant at different times, and for this he puts himself on the country.

The defendant also appears and declares that he is not indebted to the plaintiff in any sum, and for this he puts himself on the country.

The Sheriff returned the venire.

The Jury empannelled and sworn to try issue joined in this cause were:—

- | | |
|----------------------|----------------------|
| 1. J. Jost Harkimer. | 7. David Brass. |
| 2. Joseph Forsyth. | 8. Willm. Aitkinson. |
| 3. Geo. Farley. | 9. Laur'e, Harkimer. |
| 4. Thos. McFarland. | 10. Peter Smith. |
| 5. Alex'r. Aitkin. | 11. Nath'l. Lines. |
| 6. Mic'l Grass. | 12. Wm. Johnson. |

Who being charged to say and declare the truth of the matter contained in the said declaration, and having examined the pleadings, and exhibits filed in this cause, and heard the evidence on both sides, and the said jury having returned into court and being called by their foreman, Mr. Jos. Forsyth, say that the defendant shall pay the plaintiff the sum of six pounds and sevenpence, together with ten shillings and tenpence costs, and that the plaintiff shall pay —.

The Court having considered the verdict of the jury do order accordingly that the plaintiff shall recover of the defendant the said sum of six pounds and sevenpence, with ten shillings and tenpence costs, and that the plaintiff do pay the remaining costs of this suit, taxed at six pounds fifteen shillings and eightpence.

WEDNESDAY, 8th JULY.

The Court met pursuant to adjournment.

Present: Neil McLean and James Clark, Esquires.

Rich'd Cartwright
vs.
Alex'r Grant.

The plaintiff appears pursuant to order of Wednesday, the first inst., and informs the Court that his demand on the defendant is only for the sum of twenty-one pounds fourteen shillings and threepence currency, for which sum he produces drafts endorsed by the defendant which appear to be yet unpaid. The plaintiff further says that the said bills were taken by him in order to receive value for them on account of the defendant from the person on whom they were drawn, and that the plaintiff had used

every means to procure payment, but that he had never received any part of it, therefore prays judgment may be obtained against the defendant for said sum. The plaintiff also informs the Court that he took the earliest opportunity to inform the defendant of the non-acceptance of said drafts which appears by copy of a letter exhibited in court, dated 28th March, '87, and it appears to the Court that had the defendant kept these drafts in his own possession they could not have been recovered. That the defendant was formerly a sergeant in I. John Patisson's Batt., and at the time that regiment was reduced the defendant left his place, and from that time until the date said letter was wrote the plaintiff was not informed of his place of residence.

The defendant being again duly called made default.

The Court having examined the draft exhibited filed in this cause do order that the plaintiff shall recover of the defendant the sum of twenty-one pounds, fourteen shillings and threepence, together with costs taxed at three pounds, three shillings and threepence.

The plaintiff appears and prays that this cause may be tried on Monday next. The Court orders that this cause may be tried as prayed.

Thomas Sparham
vs.
John Ferguson.

MONDAY, 13th JULY.

The court met pursuant to adjournment.

Present: Richard Cartwright and Neil McLean, Esquires.

The plaintiff appears pursuant to order of Wednesday last. The defendant being called, it appears to the Court that from sickness the defendant could not attend. It is therefore considered that the cause may be tried on Wednesday, 16th Sept., next term.

Thomas Sparham
vs.
John Ferguson.

The Court adjourned to Wednesday, 16th Sept.

WEDNESDAY, 16th SEPTEMBER.

SEPTEMBER
TERM.

Present: Richard Cartwright and Neil McLean, Judges.

The Sheriff returned that he has summoned the defendant. The plaintiff being duly called does not appear.

John Ferguson
vs.
John Clunes.

The Sheriff returned that he has summoned the defendant.

James Conner
vs.
Geo. Singleton.

The plaintiff appears in person and filed declaration.
The defendant being duly called made default.

Samuel Sherwood
vs.
Israell Ferguson.

The Sheriff returned that he has summoned the defendant.

The plaintiff being duly called does not appear.

Thomas Sparham
vs.
John Ferguson.
(From last Term.)

The plaintiff being called does not appear.

The Court adjourned to Wednesday, the 23rd inst.

WEDNESDAY, 23rd SEPT., 1789.

The Court met pursuant to adjournment.

Present: Richard Cartwright and Neil McLean,
Esquires.

John Ferguson
vs.
Phil. Dorland.

The Sheriff returned that he has by virtue of an execution to him directed taken the issued lands of the said Phil. Dorland, consisting of, etc.

James Connor
vs.
Geo. Singleton.

The defendant being this day called pursuant of Rule of Court on Wednesday last, it appears by a certificate exhibited and filed that the defendant is incapable of attending from sickness.

The plaintiff prays that this cause may be ordered for trial on the first day of next term.

The Court do order it accordingly.

A petition has this day been exhibited and filed by Jno. Jost Harkimer in behalf of himself and Thoms. Busby, praying of the Court that the property of Lawrence Eldman may be seized to satisfy them and other creditors for the just debts of said Eldman. The Court declined for the present making any order thereon, because Rich'd. Cartwright, one of the judges, being interested, as one of the creditors.

The Court adjourned to Wednesday the 30th inst.

WEDNESDAY, 30th SEPTEMBER.

The Court met pursuant to adjournment.

Present: The same Judges.

The Court adjourned to Friday the first day of January next.

SATURDAY, THE 2nd DAY OF JANUARY, 1790.

COURT OF
COMMON PLEAS.

The Court met pursuant to adjournment.

Present: The Honourable Richard Cartwright and the Honourable Neil McLean, Esquires.

The Sheriff returned that he has duly summoned the defendant.

John Jost
Herkimer
vs.
Lawr'e Eldman.

The plaintiff appears and filed his declaration.

The defendant being called made default.

The plaintiff prays that the default may be recorded.

The Court do order that same be recorded.

The Sheriff returned that he has duly summoned the defendant.

Peter Clark
vs.
James Connor.

The plaintiff appears in person and filed his declaration. The defendant also appears.

The plaintiff produces the defendant's note of hand payable the 14th day of October last for the sum of fifteen pounds. The defendant produces an order from Lt. Robt. Mackworth for a horse, carriage and harness, cushions, etc., left with the plaintiff for sale, and for which the defendant gave his note of hand to the plaintiff, which order the plaintiff allows to have been tendered to him by the defendant previous to his coming to court.

The plaintiff, being examined on oath, declares that Mr. Mackworth being in his debt, he would not have delivered the articles above mentioned to Mr. Mackworth's order even had he not have disposed of them, and consequently not the note he seized for the sale of them.

Philip P. Lansingh, Esq., being sworn at the request of the defendant, deposeth that the plaintiff told him on producing Mr. Mackworth's order that Mr. Mackworth was not indebted to him and that he might safely advance him six pounds.

On question by the plaintiff the deponent acknowledges that he did not produce Mr. Mackworth's order to the plaintiff till the day after Mr. Mackworth's departure, but persists in affirming that the plaintiff told him Mr. Mackworth was not in debt.

The Court does order that the plaintiff shall produce his account with Robert Mackworth on Friday next, the 8th inst., and that judgment shall be given in this cause on that day.

The Court adjourned to Friday next.

FRIDAY, 8th JANUARY, 1790.

The Court met pursuant to adjournment.
Present: The same Judges.

Peter Clark
vs.
James Connor.
(From Saturday
last.)

The plaintiff appears in person and filed replication.
The defendant being called, P. Lansing, Esq., appears
and informs the Court that the defendant is not able to
attend from sickness.

The Court therefore order that judgment may be given
in this cause on Monday next.

Peter Clark
vs.
William Bell.

The Sheriff returned that he has duly summoned
the defendant.

The plaintiff appears in person and filed declaration.

The defendant being duly called made default.

The plaintiff prays that the default be recorded.

The Court order that default be recorded and that the
defendant be called on Friday next and that judgment
may be given in this cause.

Messrs. McAuley
& Markland
vs.
Moore Wolvende
Hovenden.

The Sheriff returned that the defendant was duly
summoned.

The plaintiff appears and filed declaration.

The defendant made default.

The plaintiff prays that default be recorded.

The Court order that the default be recorded and that
this cause may be heard on Friday next.

John Ferguson
vs.
Alex'r Fisher.

The Sheriff returned that he has duly summoned the
defendant.

The plaintiff being called does not appear.

The defendant appears in person and prays that this
cause be dismissed with costs to be paid by the plaintiff,
taxed at three pounds, one shilling and eightpence.

The Court adjourn until to-morrow at ten o'clock.

SATURDAY, 9th JANUARY.

The Court met pursuant to adjournment.
Present: The same Judges.

John Jost
Harkimer
vs.
Lawrence Eldam.
(From Saturday
last.)

The plaintiff appears in person.

The defendant being again called made default.

The Court do therefore proceed to examine the demand
of the plaintiff.

The plaintiff exhibits an account amounting to the sum
of nineteen pounds, eighteen shillings and eightpence, to

which amount is included a charge of three pounds, fifteen shillings for Thos. Busby which does not appear to be duly authenticated and attested.

The Court do order that the same be deducted, and the plaintiff having made oath that the balance of sixteen pounds, three shillings and eightpence is justly due him by the defendant, adjudge that the defendant shall pay the plaintiff the aforesaid sum of sixteen pounds, three shillings and eightpence, together with costs of suit taxed at three pounds, six shillings and ninepence.

The Court adjourned to Monday next.

MONDAY, 11th JANUARY.

The Court met pursuant to adjournment.

Present: The same Judges.

Brought on from Saturday last.

The Court having duly considered the merits of this cause do dismiss the suit with ordering that the defendant do pay fifteen shillings and ninepence costs, that amount having been incurred previous to his tendering Lieut. Mackworth's order to the plaintiff in discharge of his (the defendant's) note, the remaining sum of forty-five shillings costs in this suit to be paid by the plaintiff.

The reasons on which they ground their decision are as follows:—

It appears by his own avowal that the plaintiff was agent for Robt. Mackworth in disposing of a horse, carriage and harness, for which the note of hand in question was given. It appears also by the order given by Lieut. Mackworth to P. Lansing, Esq., and by him endorsed to the defendant that it was the intention of the said Mackworth to take the said property or proceeds thereof out of the plaintiff's hands and commit it to the disposal of the said Lansingh, and on this ground they think the order a fair and equitable sett off against the note, as it must of course discharge the plaintiff from any claim against him by his principal. And whereas the plaintiff did allege that Lt. Mackworth, the proprietor of the effects in question, was in his debt, and that were he to part with the proceeds he should lose his debt. The Court thought it reasonable that he should be allowed so much as would indemnify him, and with this intent did order that he should produce the state of said debt in Court, but he not having complied with said order, on excuses that appear frivolous and even imply a contempt of Court, they must consider his allegations as ill-founded.

Peter Clark

vs.
James Connor.

(From Saturday
last.)

Peter Shultz
vs.
William Carsons.

The Sheriff returned that he has summoned the defendant.

The plaintiff appears in person and filed declaration.

The defendant also appears in person, and informs the Court that he did not take any advantage of the plaintiff as alleged by him in said declaration, but that the plaintiff made proposal to him that he should take his lands and tenements and all his property whatsoever in consideration of his taking him into his family and maintaining him during his life, and that he did not take advantage of his bad health or his being insensible, as alleged by the plaintiff, but that the plaintiff understood the agreement between them and was well satisfied therewith, and further with respect to the value of said property the sum stated in the declaration exceeds the real value, as the quantity of several of the articles are exaggerated and no certain quantity was ever ascertained, and all this he is ready to prove.

The plaintiff further informs the Court and persists in affirming that he never did propose any agreement in the manner stated by the defendant, but that the defendant came to the plaintiff's house and asked him to take some liquor and brought a writ (P) with him which he asked the plaintiff to sign, and said the purport of it was that he should take him to his (the defendant's) house and that he would take care of him and furnish him with necessaries during his illness, that the plaintiff should satisfy him for his trouble and expense, if he should recover his health, and that if he died he should leave him all his property, and, further, the plaintiff desired the defendant to defer executing any writings until he (the plaintiff) should be in better health, but the defendant urging him to sign the paper he had brought with him, the plaintiff did put his hand to the pen without knowing what he was doing, or the contents of the said paper, and after this he removed to the defendant's house, but as soon as he recovered his health he proposed satisfying the defendant and returning to his own house. Upon which the defendant threatened to stick him through the body with a pitchfork and said he would set fire to the house if he did return to it, and during his stay at the defendant's house he was ill-used and treated as a slave, all of which he is ready to prove.

The depositions of Nathaniel Hale, Edward Hicks, Andrew Hesse, and Francis Keefer were taken and the same are duly filed. The agreement and bonds in this cause are also filed.

The Court adjourned to Friday next, the 15th inst.

FRIDAY, 15th JANUARY.

The Court met pursuant to adjournment.

Present: The same Judges.

It appears upon considering the evidence in this cause that the plaintiff's allegation is ill-founded, and that his agreement with the defendant was executed with due deliberation and for a good consideration, the court do therefore consider the defendant as having a just right to every part of the plaintiff's property expressly conveyed to him, but no other, and he therefore can have no claim upon any money, or clothes of the plaintiff or any debts due to him. And as it further appears to have been the intention of the parties that the plaintiff by the cession of his property to the defendant should procure himself a comfortable asylum in the plaintiff's family for the rest of his life, the Court to adjudge that the defendant shall enter into bond for himself and his heirs under the penalty of £200, that he will not beat or otherwise ill-treat the plaintiff, nor require of him more than moderate labour, but that he will find and provide for him sufficient meat, drink, clothing, waiting and lodging, in sickness and in health, and at his death give him decent burial.

And whereas it does not appear to the Court that the defendant hath hitherto violated any of the above conditions respecting the plaintiff they do therefore adjudge that the defendant be dismissed from this action and that the plaintiff pay the costs taxed at eight pounds, twelve shillings and one penny.

The plaintiff appears in person. The defendant being again duly called this day made default.

The plaintiff produces and filed an obligation of the defendant for the amount of one hundred and twenty pounds currency, as part of his demand against the defendant, he likewise exhibits and filed an account currency by which there appears to be a balance of fifteen pounds, thirteen shillings and sixpence coming to the plaintiff, which sum the plaintiff makes oath to be justly due to them by the defendant, and there likewise appears to be the further sum of twenty-six pounds, nineteen shillings due to the plaintiff for interest on the aforesaid obligation.

The Court do therefore order and adjudge that the plaintiff shall recover of the defendant the sum of one hundred and thirty-five pounds, thirteen shillings and sixpence for his said debt, and the further sum of twenty-six pounds

Peter Shultz
vs.
William Carsons.
(From Monday
last.)

Robert Macaulay
and Thomas
Markland
vs.
Moore W.
Hovenden.
(From Friday
last.)

nineteen shillings for interest on the said obligation. In all amounts to the sum of one hundred and sixty-two pounds, twelve shillings and sixpence, with cost of suit taxed six pounds, seventeen shillings and sevenpence.

Peter Clark
vs.
William Bell.
(From Friday
last.)

The defendant being again called this day made default.

The plaintiff appears in person and exhibits a written acknowledgement of the defendant for five pounds, likewise a promissory note for the sum of seven pounds, eight shillings and eightpence, in all amounting to the sum of twelve pounds, eight shillings and eightpence.

The Court do order and adjudge that the plaintiff shall recover of the defendant the sum of twelve pounds, eight shillings and eightpence currency, with costs of suit taxed at three pounds, five shillings and tenpence.

The Court adjourned to Tuesday, the 16th day of March next.

MARCH TERM.

MARCH TERM.

TUESDAY, 16th MARCH, 1790.

The Court met pursuant to adjournment.
Present: The two Judges.

John Jost
Harkimer
vs.
Lawrence Eldam.

The plaintiff having obtained an execution against the goods and chattels, lands, and tenements of the defendant for judgment obtained the 8th day of January last, the Sheriff returned that the defendant had not any goods or chattels that he could find within his district, whereof he could levy any part of said judgment, as by the said execution he was commanded.

Messrs. Macauley
& Markland
vs.
Moore W.
Hovendon.

The plaintiff having obtained an execution against the goods and chattels, lands and tenements of the defendant, for judgment obtained the 15th January last, the Sheriff returned that the defendant has not any goods or chattels that he could find within his district whereof he could levy any part of said judgment as by the said execution he is commanded.

Joseph Allen
vs.
Titus Simons.

The Sheriff returned that he has duly summoned the defendant to appear this day.

The plaintiff appears in person, and filed declaration.

The defendant also appears in person and denies that he is indebted to the plaintiff as set forth in said declaration.

It does not appear to the Court that the parties are prepared to satisfy them in this cause. They therefore order that this cause may be tried on Thursday, the 25th inst.

The Sheriff returned that he has duly summoned the defendant to appear this day.

Joseph Forsyth
vs.
Geo. Finkle, Jun.

The plaintiff appears in person and filed declaration.

The plaintiff prays that this cause may be tried on Tuesday next.

The Court order that this cause may be tried as prayed.

The Court adjourned to Tuesday next, the 23rd inst.

TUESDAY, 23rd MARCH.

Present: Richard Cartwright, Esq.

The Sheriff returned that he has duly summoned the defendant to appear this day.

James Clark, Jun.,
vs.
John Cascallion.

The Sheriff returned that he has duly summoned the defendant to appear this day.

James Clark, Jun.,
vs.
Titus Simons.

The Sheriff returned that he has duly summoned the defendant to appear this day. By consent of the parties this cause will be tried on Friday, the 2nd July.

William Terks
vs.
Joseph Carnahan.

Neil McLean, Esq., one of the Judges, being unable to attend from sickness, no business can be done.

The Court adjourned to Thursday next, the twenty-fifth inst.

THURSDAY, 25th MARCH.

Present: Richard Cartwright, Esq.; Neil McLean, Esq.

The plaintiff appears and produces the defendant's promissory note for the sum demanded in the declaration.

James Clark, Jun.,
vs.
John Cascallion.

Phil. Lansingh appears for the defendant and produced a certificate from Jac. Gill, Jun., of the defendant's ill-state of health, which prevents his appearance, and prays that this cause may be tried next term.

(From Tuesday last.)

The Court does order that this cause may be tried on Thursday, the first day of July next.

The plaintiff appears and filed declaration.

The defendant being duly called made default.

The plaintiff prays that the default may be recorded.

James Clark
vs.
Titus Simons.
(From last adjt.)

The Court so orders.

The defendant now appears and prays that the default may be taken off.

The plaintiff exhibits to the Court the defendant's promissory notes payable to George Peter Hoyle or order for the sum set forth in the declaration, endorsed to Jas. Clark, Esq., or order, for value received in account.

The defendant appears in person and pleads that the said notes are endorsed payable to James Clark, Esq., and that the plaintiff in this cause is not the said Jas. Clark, Esq.

The plaintiff produces a power of attorney from James Clark, Esq., constituting him his agent, to transact his business in general.

The Court orders that they will consider further the merits of this cause and determine the plaintiff's right to recover the said debt on Saturday next; another judgment will then be given in this cause.

Frederick Romer
vs.
John Dingman.

The Sheriff returned that he has duly summoned the defendant to appear this day.

The plaintiff appears and filed declaration.

The defendant also appears in person and exhibits and filed a written agreement made between the parties, Peter Collier and James Williams being called and sworn.

The defendant informs the Court that the plaintiff has no just grounds for the complaint set forth in the declaration, but that he has at all times used the plaintiff well and performed every part of his agreement with the plaintiff, notwithstanding that the plaintiff has often behaved in a very unbecoming manner to him and his wife, and has often without any provocation called him liar and other opprobrious names, and has complained that he wanted provisions without any cause.

The Court having heard the parties and the evidence in this cause do consider that the plaintiff has no just grounds for complaint; they do therefore order this cause to be dismissed with costs to be paid by the plaintiff.

Joseph Allen
vs.
Titus Simons.

The plaintiff appears in person and prays that a special jury may be summoned to try this cause on Saturday, the 27th inst.

The Court does order that a venire may be issued as prayed.

The Court adjourned to Saturday next.

SATURDAY, 27th MARCH.

The Court met pursuant to adjournment.

Present: The same Judges.

Brought on from last adjournment.

The Court having duly considered the merits of the defendant's plea are of the opinion that the cause be dismissed: 1st, because the power of attorney produced by the plaintiff is not legally authentic, there being no subscribing witness to the execution thereof. 2nd, admitting it to have been authentic, it remains a doubt whether it would authorize the plaintiff to prosecute on this case, the notes being endorsed particularly to James Clark, Esq. It would appear that his endorsement would be necessary to authorize the claim of any other person. 3rd, the declaration ought in all events to have been laid in the name of the principal, not of the agent.

James Clark
vs.
Titus Simons.
(From last adjt.)

The Sheriff returned that he has duly summoned the jury as per pannel annexed to the venire.

The plaintiff appears in person.

The defendant also appears in person.

Joseph Allen
vs.
Titus Simons.
(From last adjt.)

The jury called and sworn were:—

- | | |
|---------------------|-----------------------|
| 1. Joseph Forsyth. | 7. Jno. Ferguson. |
| 2. Geo. Farley. | 8. John Jost Harkimer |
| 3. Don'l. McDonell. | 9. James Richardson. |
| 4. Jno. Symington. | 10. Nat'l. Lyons. |
| 5. Arch. Thomson. | 11. David Brass. |
| 6. Thomas Markland. | 12. James Robins. |

Witnesses for the plaintiff sworn: Will'm. Bell, John McMann.

Witness for defendant: Gilbert Sharp.

The jury retired to consider of their verdict, and having returned into court, by their foreman, Joseph Forsyth, say that for want of sufficient evidence that they decline giving any verdict at present, as they do not think they can do it with justice to the parties.

The Court do order that the jury do again withdraw to consider further on their verdict.

The jury having again withdrawn to consider on their verdict, returned into court, and by their foreman, Joseph Forsyth, say that the plaintiff has not substantiated his demand of one hundred and twenty-three pounds against the defendant, and that the defendant is not indebted to the plaintiff that sum, but that the defendant is indebted

to the plaintiff a greater sum than the amount of the defendant's promissory note exhibited in court.

The jury having again retired to consider their verdict, returned into court.

The plaintiff being duly called made default.

The Court ordered that the jury be discharged without giving their verdict, and that this cause be dismissed with costs to be paid by the plaintiff.

TUESDAY, 30th MARCH.

The Court met pursuant to adjournment.

Present: The same Judges.

The Court adjourned until to-morrow.

WEDNESDAY, 31st MARCH.

The Court met pursuant to adjournment.

Present: The same Judges.

Messrs. Macauley
& Markland
vs.
James Connor.

The Sheriff returned that he has duly summoned the defendant to appear this day.

Thomas Markland appears for the plaintiff and filed declaration, stating that the defendant is indebted to the plaintiff the sum of forty-three pounds, eighteen shillings currency for balance of account due them.

The defendant appears in person and states that the accounts rendered him by the plaintiffs were very inaccurate, and many charges made against him which he could not agree to settle in the state it was rendered him, and that the overcharges amount to one pound, eleven shillings and sixpence. The defendant further declares that he is not indebted to the plaintiffs, but that there is a balance due him and produces an account against Robt. Macauley for medicine and attendance, amounting to the sum of fifty pounds.

The plaintiffs, on question by the Court, says that he does not conceive the house of Macauley and Markland to be liable for any private debt contracted by either of them, and, further, that Robert Macauley has a private account against the defendant not included in the amount set forth in the declaration.

It is the opinion of the Court that they will require time to deliberate on the merits of this cause, do order that the parties may appear in this court of Common Pleas on Thursday, the first day of July next.

The Court adjourned to Thursday, the first day of July next.

THURSDAY, JULY 1st, 1790.

JULY TERM.

The Court met pursuant to adjournment.

Present: The Honourable Richard Cartwright, Jun.,
and the Honourable Neil McLean, Esquires.

The Sheriff returned that he has duly summoned the defendant to appear this day.

The plaintiff appears in person and prays the Court that this cause may be tried next term because the evidences that he has subpoenaed do not appear, which are material to this cause.

The defendant also appears in person and prays that this cause may be tried at a short day this term, because it is the plaintiff's business to be ready for trial.

On motion of the plaintiff the Court does order that this cause may be tried on the first day of September term next, as it does not appear that there has been any neglect on the plaintiff's side to procure the necessary evidences.

The Sheriff returned that he has duly summoned the defendant to appear this day.

The parties being called it appears to the Court by evidence that the plaintiff cannot attend from sickness. The Court does order that this cause may be tried on Saturday next.

The Sheriff returned that he has duly summoned the defendant by having left a true copy of the writ and declaration in the hands of a grown person at the late place of dwelling of the defendant.

William McVay, Esq., appears for the plaintiff and produces and filed his power of attorney, which is admitted by the Court.

The defendant being duly called made default.

The attorney for the plaintiff prays that default may be recorded.

The Court do order that the default is recorded accordingly.

A writ of capias having been issued against the body of the defendant, the Sheriff returned that he has taken the body of defendant.

The plaintiff appears in person.

James Clark, Junr., appears for the defendant and produced a power of attorney which the Court do consider

Joseph Allen
Plaintiff,
vs.
Titus Simons,
Defendant.

James Robins,
Plaintiff,
vs.
Willett Casey,
Defendant.

Lewis Kotte,
Plaintiff,
vs.
Law'e Eldam,
Defendant.

Allen McLean,
Plaintiff,
vs.
George Farley,
Defendant.

to be sufficiently authentic, and prays the Court that whereas the plaintiff has never delivered a copy of the declaration as required by law, by which reason the defendant cannot be ready for trial, therefore, prays that the Court may order this cause for next term.

On motion of the defendant the Court do order that this cause may be tried the first day of September term next.

John Jost
Harkimer,
Plaintiff,
vs.
Lawrence Eldam, ~
Defendant.

The Court having issued execution against the lands and tenements of the defendant, the Sheriff has returned that he has seized as belonging to the defendant a lot of land in the First Township No. 23, containing 100 acres, and has duly authorised the same for sale on Tuesday, the 20th day of July instant.

Messrs. McAuley
& Markland
vs.
Moore Wols'e
Hovendon.

Execution having issued against the lands and tenements of the defendant, the Sheriff returned that he has seized as belonging to the defendant three different lots of land lying on the carrying place, Little Lake, viz., one-half of lot No. 20, consisting of 100 acres; lot No. 21, consisting of 200 acres; and lot No. 22, consisting of 200 acres, in all five hundred acres of land, which remain unsold by reason of a caveat being lodged in his office on the 16th day of April last by Mr. Joseph Allen, claiming the said lands to be his property, and that he waits the further determination of the Court thereon.

The Court do order that the said Joseph Allen's title to the said lands shall be tried on Thursday, the fifteenth inst.

Robt. Hamilton
and Rich'd Cart-
wright, Merchants,
Plaintiffs,
vs.
Alexander Grant,
Defendant.

Execution having issued against the goods and chattels, lands and tenements of the defendant, the Sheriff returned that the defendant has no goods or chattels, lands or tenements in his district whereon he could levy any part of the debt or costs as commanded him to do.

Macauley & Mark-
land, Plaintiffs,
vs.
James Connor,
Defendant.

The plaintiffs appear in person.

The defendant being duly called made default.

(From March
Term last.)

The plaintiff prays that his objection of the 30th inst. may be withdrawn, and that the accounts for and against Robt. Macaulay already exhibited and filed may be entered and considered in this action.

The Court do accordingly order that the said accounts may be admitted in this action as prayed and that the action may be proceeded on these grounds.

The Court adjourned until to-morrow at 10 o'clock in the forenoon.

FRIDAY, 2nd JULY, 1790.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiff appears in person and prays that issue may be joined.

The defendant also appears in person and objects to any further proceedings in this action, because the original writ has been served on him instead of a copy, and that the Court cannot legally proceed thereon.

It appears to the Court by the evidence of the Sheriff that the copy of the summons and declaration was duly served on the defendant, and that he has since obtained the original by a mistake of the Sheriff.

The defendant further objects that the plaintiff in his declaration does not sufficiently describe the said 100 acres of land, and that the plaintiff should point out the same and prove his title to it.

The plaintiff informs the Court that the said land consists of the half of lots Nos. 21, 22 and 23, in the second Concession of Adolphustown, which were duly granted to his deceased father, Isaac Yerks, by a certificate from Government, which he is ready to prove.

The defendant says that he is entitled to the whole of the said lots and that the plaintiff has no right to any part of them, and is ready to prove the same.

The plaintiff says that in the year 1784 his father, the late Isaac Yerks, received a certificate for one hundred acres of land jointly with the defendant, and after making some little improvement which was supposed necessary for securing his title, he had occasion to take a journey to the States in 1785. That in the meantime he resided in the family of the defendant, whom he left his attorney to keep possession of the lot, suggesting that it would be otherwise in danger of being taken from him. That his father returned in the year 1787, and immediately took possession of the premises and built a house thereon, in which he lived till about August, 1788, at which time he died. That, without any further authority, the defendant took possession of the premises and doth still hold them to the wrong of the lawful heir and administrators.

Evidence called by the plaintiff, viz., John German, Christ'r German, Henry Johnson, Simon Chorly, Michael Slood, and Abraham Maby; the said witnesses were duly sworn and their depositions taken and filed. The defendant sayeth that he has taken possession of the lands in question partly in consequence of a deed of gift from the

William Yerks,
Plaintiff,
vs.
Joseph Carnahan,
Defendant.

(From 23rd
March.)

original proprietor, Isaac Yerks, and partly from considering them as vacant, by Yerks relinquishing them to the defendant's lawyer, Mr. Knotte. Evidence called by the defendant, Jno. Baker, sworn and his deposition filed.

The Court will deliberate on the merit of the cause and give judgment on Thursday next.

SATURDAY, 3rd JULY, 1790.

Present: The same Judges.

James Robins
vs.
Willet Casey.
(From Thursday
last.)

The plaintiff appears in person and produces a promissory note, dated the 8th day of October, '89, payable to John Hyck or order.

The defendant also appears in person and sayeth that this cause should be dismissed with costs, because that he is summoned by Jas. Robbins, plaintiff, and the declaration is signed John Hyck, which is contrary to the ordinance of this province.

The Court having observed the said summons and declaration which appears to be issued in the manner stated by the defendant they do therefore consider that this action be dismissed with costs to the defendant, taxed at four pounds, three shillings and threepence.

Macaulay &
Markland
vs.
Jas. Connor.

The defendant appears in person and prays that default may be taken off, and prays that this cause may be tried on Monday next.

The Court, by the consent of the parties, do order that this cause may be tried as prayed.

James Robins,
Plaintiff,
vs.
Willet Casey,
Defendant.

And the defendant cometh in person into this court, and for plea in bar to the declaration of plaintiff in this cause or to so much thereof as is necessary for him to answer, sayeth that the declaration and the matter therein contained is not sufficient in law to maintain the said action, nor is he bound by the law of the land to answer thereto, inasmuch as it appears that a summons has issued for the plaintiff against the defendant on the declaration and prayer of John Huyck, not the plaintiff himself, which is contrary to the ordinance of the province of the 25th of his present Majesty's Act first, which lays down the manner of proceedings in action above the value of £10 sterling in the courts of this province. Wherefor the defendant prays to be hence dismissed, with his costs in this behalf most unjustly sustained.

The Court adjourned to Monday next, the 5th inst.

MONDAY, 5th JULY, 1790.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiff, Thomas Markland, produces Robert Macauley's account against the defendant for a box medicine, charged sixty pounds, which is by order of Court added to the amount demanded in the declaration.

The defendant does also appear in person and alleges that the said chest of medicine was not really worth sixty shillings, and that no specific price was agreed on by the parties when the said chest of medicine was delivered, which is not denied by the plaintiff. The plaintiff also produces his account against Robt. Macauley for medicines and attendance in curing a broken leg, amounting to fifty pounds.

The plaintiff objects to the said account and declares that the charge is exorbitant for the medicine and attendance that have been given.

The defendant, in this case, alleges that his charge is not extravagant nor without a precedent, and that the cure he performed was of a dangerous nature and that he is justly entitled to the amount he demands for the said cure.

Mr. Joseph Forsyth being called by the defendant, upon oath declares that he heard it publicly reported in Montreal that Mr. Murray had paid Doctor Bleak fifty pounds for curing a broken leg, which was allowed by the Court in that district.

The Court do not consider themselves competent to judge of the nature of the defendant's charge without consulting the opinion of professional men upon the subject, and do therefore call upon Jas. Latham and James Gill, surgeons, for their opinion.

On question by the Court: Mr. Latham says he has not attended cases of this kind in this province, and that their charges generally depend on the circumstances of the patient; that he has known from two pounds to one hundred guineas paid for cures of that kind.

Question by the Court: On considering all the circumstances in this case, as a professional man, what would you think yourself entitled to charge? Mr. Latham answers that he would think himself very honourably paid by thirty guineas.

Question of Court: Would you think yourself entitled to charge so much? Answered that he certainly would.

Messrs. Macauley
& Markland
vs.
James Connor.

(From Saturday
last.)

Question by the Court to James Gill: Have you attended cases of the nature of that now before the Court, in this province?

Answer: I have not attended any but amongst soldiers.

Question by the Court: Are you not acquainted what charges are made in suit cases by professional men in this province?

Answer: That he has known from ten to seventy pounds charged, according to circumstances.

Question by the Court: What would you think yourself entitled to charge for a case of this kind, considering all the circumstances?

Answer: That he would charge at least ten pounds for each fracture.

Question by the Court: Do you include anything for medicine in the charge you have mentioned?

Answer: That he does not include anything for medicine, but merely for reducing the fracture.

The Court having heard the parties and the evidence in this case, will take time to deliberate on the merits and give judgment on Thursday next.

The Court adjourned to Thursday next.

THURSDAY, 8th JULY, 1790.

The Court met pursuant to adjournment.

Present: The same Judges.

William Yerks
vs.
Joseph Carnaham.

The Court having duly considered the merits of this action do order and adjudge that the plaintiff William Yerks be put in possession of the premises in the space of one month, that is to say, the whole of lots Nos. 23, and such moiety of No. 22 as shall be equal to the full half of the whole three lots Nos. 21, 22 and 23, and that the defendant do pay the costs of this suit, taxed at £7 8s. 11d.

Messrs. Macauley
& Markland
vs.
James Connor.

The Court having duly considered the merits of this action do order and adjudge that the plaintiff shall recover of the defendant the full sum of thirteen pounds, six shillings and sixpence currency of this province, and that the defendant do pay costs of suit.

John Ferguson
vs.
Abe. Fisher.

The Sheriff returned that he has duly summoned the defendant to appear this day.

The plaintiff appears in person.

The defendant being duly called made default.

The plaintiff prays that the default may be recorded.

The Court does order that the default be recorded.

The Sheriff returned that he has duly summoned the defendant to appear this day.

John Connor
vs.
John Edgar.

The plaintiff appears in person.

The defendant does also appear in person.

The Court do order that this cause may be heard to-morrow.

The Sheriff returned that he has duly summoned the defendant to appear this day.

Macaulay &
Markland
vs.
John Howard.

The plaintiff appears by Thos. Markland in person.

The defendant also appears in person.

The plaintiff produced and filed an account against the defendant, amounting to the sum of sixty-one pounds, six shillings and fivepence halfpenny currency, and says that is the exact sum due by the defendant.

The defendant does acknowledge himself justly indebted to the plaintiff for the said sum of sixty-one pounds, six shillings and fivepence halfpenny currency.

The Court do therefore order and adjudge that the plaintiff shall recover of the defendant the sum of sixty-one pounds, six shillings and fivepence for his said account, and the further sum of seven pounds, ten shillings for interest on his promissory note, together with the costs of suit.

The Sheriff returned that he has duly summoned the defendant.

Joseph Forsyth
& Co.,
vs.
John Howard.

The plaintiff appears in person and filed declaration.

The defendant also appears in person and acknowledged himself indebted to the defendant the sum demanded by the plaintiff in his declaration.

The Court do therefore order and adjudge that the plaintiff shall recover of the defendant the sum of fifty-one pounds, one shilling and elevenpence currency for his said debt, together with costs taxed at —.

The Sheriff returned that he has duly summoned the defendant to appear.

Titus Simons
vs.
Joseph Allen.

The plaintiff appears in person.

The defendant also appears in person and prays that this cause may be tried next term, because from the short notice given him he is not prepared for trial, particularly for want of material witness.

The plaintiff says he has no objection to this cause being tried next term, and prays that it be entered for trial on the second return day of next term.

The Court do therefore order that this cause may be tried on the second return day of next term.

Lewis Knotte
 vs.
 Lawrence Eldam.
 (From Thursday
 last.)

William McKay appears for plaintiff.

The defendant being again called according to Rule of Court does not appear.

The Court do therefore order that the plaintiff may proceed to prove his demand.

On motion of the plaintiff the Court do order that this cause may be tried on Thursday, the fifteenth inst.

The Court adjourned till to-morrow at ten o'clock.

FRIDAY, 9th JULY.

The Court met pursuant to adjournment.

Present: The same Judges.

John Connor
 vs.
 John Edgar.
 (From yesterday.)

The plaintiff appears in person.

The defendant also appears in person, and says that he is not indebted to the plaintiff, but, on the contrary, the plaintiff is considerably in his debt.

The plaintiff persists that the defendant is indebted to him the sum of fourteen pounds, eleven shillings currency, which he is ready to prove.

Robt. Pendle, upon oath, declares that to the best of his knowledge his wife was never at the defendant's house more than three times during the residence of the plaintiff there.

Thomas Burnett, upon oath, declares that he lives near the farm of the defendant, and that during the plaintiff's residence there he did not observe any improvement made worth notice.

Upon question by the Court, he says that had any improvement been made, such as a man would make in less time than forty days, he certainly should have taken notice of it, and this deponent further says that the plaintiff had told him that the defendant had taken him and his family into his house at a time they were much distressed.

It appears that in the fall of 1787, about October, the plaintiff with his family, a wife and two children, were admitted into the defendant's house, where he resided till the latter end of March. By his own avowal he brought with him no other provisions than a bag of flour, about 3½ bushels, and 3 bushels of corn he afterwards gave the defendant. It appears that he was employed by the defendant only to thrash 22 bushels of grain, and many of the articles he charges appear absolute fabrications. Even he himself allows that he would not have made any demand against the defendant if the defendant had not made out an account against him.

The Court are clearly of opinion that the plaintiff hath no just demand against the defendant, and do therefore dismiss the suit and order the plaintiff to pay the costs taxed at £2 15s. 10.

The defendant appears in person and prays that default of yesterday may be taken off and that this cause may now be tried.

John Ferguson
vs.
Alex^r Fisher.

The plaintiff also appears in person and is ready to prove his demand to be just.

The Court do therefore order that this cause may now be heard.

The plaintiff produces his account against the defendant amounting to the sum of seventeen pounds ten shillings, and a charge of interest amounting to three pounds, three shillings currency.

The defendant denies that he is indebted to the plaintiff the said account, and exhibits an account against the plaintiff amounting to thirty pounds, nine shillings and fourpence.

The Court having fully heard the parties and filed the different papers produced by the parties in this cause, will deliberate on the merits of the cause and give judgment on Thursday next.

The Court adjourned to Thursday next.

THURSDAY, 15th JULY.

The Court met pursuant to adjournment.
Present: The same Judges.

William MacKay appears for the plaintiff and prays that this cause may be referred for trial to the first day of next term.

Lewis Kotte
vs.
Lawr'e Eldam.
(From the 8th
inst.)

The defendant being duly called made default.

The Court on motion of the plaintiff do order that this cause may be tried on the day prayed.

The plaintiff appears in person. The defendant being duly called made default.

John Ferguson
vs.
Alexander Fisher.
(From the 8th
inst.)

The Court do not consider the evidence produced to be sufficient for them to give final judgment in this cause, they do therefore order that the parties may appear in this Court on the first return day of next term, and that they produce such further proofs as they may be able to bring and necessary to substantiate their respective accounts.

Macauley &
Markland
vs.
Moore W.
Hovendon.

Thomas Markland appears for plaintiffs and prays that Joseph Allen may be called, to show cause why the Sheriff shall not proceed to the sale of the defendant's lands taken in execution to satisfy the judgment obtained against defendant, agreeable to the order of Court of Thursday, the first inst.

Joseph Allen does appear to prove his right and title to the lands, taken in execution as belonging to Moore W. Hovendon, to satisfy Messrs. Macauley and Markland for judgment against the defendant.

The Court having duly considered and examined the several exhibits produced by the said Joseph Allen, likewise the evidence produced by him, the Court do therefore order that the Sheriff shall proceed to make sale of the lands in question to satisfy the aforesaid judgment. The reasons assigned by the Court for the foregoing judgment are as follows, viz.:—

That there is no maxim more certain than that a man cannot convey a better title than he has received. The question therefore before the Court is: Is Mr. Hovendon's conveyance to Mr. Ferguson legal, or granted on good and valuable consideration. On this subject there seems little cause of doubt. The writing said to be a conveyance and produced in Court is so very irregular that it can give no title, and from many circumstances appears to have been given merely with a view to defraud Mr. Hovendon's just creditors. Further, it appears that Mr. Allen was apprised of these circumstances previous to his accepting any grant from Mr. Ferguson.

SEPTEMBER
TERM.

THURSDAY, 16th SEPTEMBER, 1790.

The Court met pursuant to adjournment.

Present: The Honourables Richard Cartwright and Neil McLean, Esquires.

Joseph Allen
vs.
Titus Simons.
(From last Term.)

The plaintiff appears in person and prays that this cause may be tried on Thursday next, the 23rd inst.

The defendant also appears in person and says that he has no objection to the motion of the plaintiff.

The Court do order that this cause may be tried as prayed.

Allen McLean
vs.
George Farley.
(From last Term.)

The plaintiff appears in person and prays that this cause may be tried on Friday, the twenty-fourth instant.

The Court on motion of the plaintiff do order that this cause may be tried as prayed.

The parties do personally appear.

The Court do order that this cause may be heard to-morrow.

John Ferguson
vs.
Alex'r Fisher.
(From last Term.)

The Sheriff returned that he has duly summoned the defendant to appear this day in court.

Daniel McQuinn
vs.
Thomas Markland.

The plaintiff appears in person and prays that this cause may be tried on Saturday, the eighteenth.

The defendant also appears in person and prays that this cause may be tried on Friday, the 26th inst.

The Court do order that the defendant may plead to this cause on Saturday, the eighteenth inst.

The Court do order that this cause may be tried on Saturday, the 18th inst.

Lewis Kotte
vs.
Lawrence Eldam.
(From last Term.)

The Court adjourned until to-morrow at ten o'clock in the forenoon.

FRIDAY, 17th SEPTEMBER.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiff appears in person and prays that the deposition of Wm. Macdonell may be taken in this cause.

John Ferguson
vs.
Alex'r Fisher.
(From yesterday.)

The said witness was duly called and sworn, and his deposition taken and filed.

The defendant also appears in person and represents to the Court that the receipts now presented to the Court by the plaintiff are official papers obtained when the parties were in office, and that he does not consider himself accountable to the plaintiff for such.

The plaintiff further represents to the Court that he considers himself liable for any deficiency of stores, and that he has already satisfied the present Barrack Master at this place, Mr. Sparham, for deficiency of stores in that department.

The Court not being prepared to give judgment in this cause at present, will deliberate further on the merits of this cause and give judgment to-morrow.

The Court adjourned until to-morrow at ten o'clock in the forenoon.

SATURDAY, 18th SEPTEMBER, 1790.

The Court met pursuant to adjournment.
Present: The same Judges.

John Ferguson
vs.
Alex^r Fisher.
(From last adjt.)

The Court having duly considered the merits of this cause from the proofs laid before them do order and adjudge that the plaintiff shall recover of the defendant the sum of four pounds for his debt and three pounds, four shillings and elevenpence costs.

Lewis Kotte
vs.
Lawr^e Eldam.
(From Thursday last.)

Mr. David Ross appears for the plaintiff and produces a special power from the plaintiff's agent, Mr. William MacKay, which is allowed by the Court and ordered to be filed.

The defendant being duly called made default.

Mr. Ross prays that the default may be recorded and that judgment may be given in this cause.

The Court do not consider that the proofs produced by the plaintiff are sufficient to substantiate the demand of the plaintiff, they do therefore order that the plaintiff may produce such further proof as can be procured and appear in this court on Monday next, the twentyeth inst.

Daniel McQuinn
vs.
Thomas Markland.
(From Thursday last.)

The plaintiff and defendant personally appear in court and pray that this cause may be submitted to the arbitration of Michal Grass, David Brass, and Titus Simons, persons chosen and appointed by them.

The Court do accordingly order that this cause may be submitted as prayed, and that their award may be produced in court on Monday next, duly signed and sealed by the aforesaid arbitrators.

Adjourned to Monday.

MONDAY, 20th SEPTEMBER.

The Court met pursuant to adjournment.
Present: The same Judges.

Lewis Kotte
vs.
Lawrence Eldam.
(From Saturday last.)

Mr. Ross appears for plaintiff and informs the Court that the evidence required by the Court in this cause is immaterial and insufficient to prove the demand of the plaintiff, and therefore prays that the judgment may be given to recover of the defendant the sum of eight pounds with costs of suit.

The Court: Upon examining the charges made by the plaintiff against the defendant, it appears that the charge

for the sum of eleven pounds paid to carpenters was not by desire of the plaintiff as stated in his account, but paid to them on account of work done for the plaintiff. The Court do therefore order that the plaintiff shall recover of the defendant the sum of eight pounds, with costs taxed at two pounds, fourteen shillings and threepence.

The plaintiff appears in person.

The defendant also appears in person and produced and filed the award of Mich'l Grass, David Brass, and Titus Simons, as ordered by the Court on Saturday last, by which award the plaintiff is allowed the sum of seven pounds, four shillings, and that the defendant shall pay costs and charges.

The plaintiff demands time to consider the said award.

The Court do order that the plaintiff may be allowed time as prayed, and that he may appear in this court on Wednesday, the twenty-second inst.

Adjourned to Wednesday, the 22nd.

Dan'l McQuinn
vs.
Thomas Markland.

WEDNESDAY, 22nd SEPTEMBER.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiff appears in person and declares that he has no further objection to make why judgment should not be given according to the award produced and filed.

Dan'l McQuinn
vs.
Thomas Markland

The Court do therefore order that the plaintiff shall recover of the defendant the sum of seven pounds, four shillings, together with costs taxed at five pounds, eighteen shillings and ninepence currency.

Adjourned until to-morrow.

THURSDAY, 23rd SEPTEMBER.

The Court met pursuant to adjournment.

Present: The same Judges.

The Sheriff returned that he has duly summoned the defendant to appear.

Mr. Thomas Walker appears for the defendant and filed his warrant of attorney to appear in this action, and moves in behalf of the defendant that Mr. Ross may file his power to prosecute in this cause.

The Court do order that Mr. Ross shall produce his power to appear for the plaintiff.

John Lynd
vs.
Arch'd McDonell,
Esq.

Mr. Ross prays that time may be allowed to answer, and that the cause may be tried to-morrow.

Mr. Ross having produced no power from the plaintiff to plead to this action, the Court on motion of the defendant do order that this action be dismissed with costs.

Joseph Allen
vs.
Titus Simons.

Mr. Walker appears for the plaintiff and filed his power of attorney, which is allowed by the Court.

The defendant appears in person and says that he is not indebted to the plaintiff in the manner as set forth in the declaration.

Mr. Walker prays time until to-morrow to file replication.

The Court, on motion of Mr. Walker, do order that this cause may be brought forward as prayed.

Titus Simons
vs.
Joseph Allen.

The defendant appears by Mr. Walker and filed his plea. The plaintiff appears in person and prays time may be allowed until the last day of this term that he may procure the necessary evidence.

Mr. Walker appears for the defendant and filed his power of attorney, which is allowed by the Court.

Mr. Walker, of counsel for defendant, in answer to the motion of plaintiff, states that this cause was instituted last term, and plaintiff has had sufficient time to procure any evidence which he has to produce that if any evidence is necessary and cannot at this time be procured, it is necessary that the plaintiff make an affidavit to that effect and to the points which he means to prove.

The plaintiff prays time until to-morrow to file replication.

The Court on motion of plaintiff does order that time may be allowed as prayed.

Adjourn until to-morrow.

FRIDAY, 24th SEPTEMBER, 1790.

The Court met pursuant to adjournment.

Present: The same Judges.

Joseph Allen
vs.
Titus Simons.

Mr. Walker appears for plaintiff and prays that a venire may be ordered to try the issue, returnable on Monday next.

Mr. David Ross appears for the defendant, and filed a warrant of attorney, which is allowed by the Court.

The Court on motion of the plaintiff do order that a venire may be issued as prayed.

Mr. David Ross appears for the defendant and filed a power which is allowed by the Court, and Mr. Ross has also filed plea in abatement.

Allan McLean
vs.
George Farley.

The plaintiff appears in person, and the said plaintiff by pleading replyeth to the plea of the defendant in this cause, and saith that the defendant is guilty of the premises alledged against him in manner and form as the same is declared against him in the said declaration in this cause, and this the plaintiff prays may be enquired of by the country.

Titus Simons
vs.
Joseph Allen.

The defendant, by Mr. Walker, prays that a venire do issue returnable on Monday next.

The Court do order that a venire may issue as prayed.

The Court adjourn until to-morrow at ten o'clock in the forenoon.

SATURDAY, 25th SEPTEMBER.

The Court met pursuant to adjournment.

Present: The same Judges.

Thos. Ross appears for the plaintiff and filed a warrant of attorney which is allowed by the Court.

Titus Simons
vs.
Joseph Allen.

Mr. Ross prays leave to file the plaintiff's affidavit that a material evidence cannot be procured which is very necessary to prove the first count or charge of the declaration, and prays that this cause may be put off for trial next term.

The Court having taken into consideration the prayer of the plaintiff, likewise the affidavit filed, do order that this cause may be put off for trial until next term and that the Sheriff may be ordered to stay proceedings upon the venire issued.

Adjourned until Monday next.

MONDAY, 27th SEPTEMBER.

The Court met pursuant to adjournment.

Present: The same Judges.

Mr. Walker appeared for the plaintiff and filed answer to plea in abatement.

Allan McLean
vs.
George Farley.

Mr. Ross appears for defendant and filed replication.

Joseph Allen
vs.
Titus Simons.

The Sheriff returned the venire.

Jurors called and sworn:—

- | | |
|---------------------|--------------------|
| 1. Thomas Markland. | 7. John Duncan. |
| 2. James Robins. | 8. Amos Ainsley. |
| 3. Mich'l Grass. | 9. Nathn'l Lines. |
| 4. Arch'd Thomson. | 10. Dan'l McQuinn. |
| 5. Chris. Georgeon. | 11. Wm. Atkinson. |
| 6. Mahln. Knight. | 12. Jno. Everitt. |

The plaintiff produced and filed the defendant's note of hand for twenty-three pounds, three shillings and tenpence, likewise the plaintiff's draft for one hundred pounds currency drawn on Robt. Ellice & Co., merchants, of Montreal.

The parties having been fully heard by their respective attorneys, Mr. Walker for the plaintiffs and Mr. Ross for the defendant,

The jury retired to consider of their verdict, and having returned into court, by their foreman, Thomas Markland, say that the defendant is indebted to the plaintiff to the sum of twenty-three pounds, three shillings and tenpence and costs of suit.

The Court having duly considered the verdict of the jury do order and adjudge that the plaintiff shall recover of the defendant the sum of twenty-three pounds, three shillings and fourpence, together with costs of suit taxed at sixteen pounds, thirteen shillings and threepence currency.

Allen McLean
vs.
George Farley.

The Court having considered the plea of abatement, answer and replication, and heard the parties by their respective counsels, do order that the said plea of abatement shall be dismissed with costs, and that the defendant do plead to the merit to-morrow. Situated as are this Court and district without the assistance of professional lawyers, it is not surprising that irregularities should be committed in the preliminary steps for bringing forward a cause, and it has ever been the opinion of the Court under their peculiar circumstances they are justified in over-ruling any objection found and on such want of formality. But to reply more particularly, although the ordinances for regulating the practice of court makes a declaration necessary in the case of summons, it appears not to require it in case of attachment where it only says that the Judge granting the attachment shall be satisfied by the oath of the party that the defendant is indebted to him in a sum exceeding ten pounds. As, therefore, bail has been given

by the defendant, who hath actually removed with his family from the Province, and the plaintiff by allowing the plea of abatement, must forever be precluded from bringing this matter again forward, it is the opinion of the Court that it would be contrary to every principle of natural justice to dismiss the suit at this stage. And it would have shown more candour in the defendant to have waived his objections than to put the Court to the alternative of condemning their own act or over-ruling them.

The defendant appears by Mr. Ross, and the said defendant for plea to the action of the said plaintiffs saith that he did not agree to sell his farm mentioned in the said declaration to the said plaintiff in manner and form as the same is alledged by the plaintiff, therefore prays to be dismissed from this action with costs. And the plaintiff for replication by his attorney, Mr. Walker, saith that the defendant is indebted in manner and form as in the declaration is stated, and this he prays may be inquired of by the Court.

Adjourned until to-morrow at ten o'clock.

TUESDAY, 28th SEPTEMBER, 1790.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiff appears by Mr. Walker and prays that evidence may be called and examined to prove the agreement as set forth in the declaration.

Allen McLean
vs.
George Farley.

Mr. Ross appears for the defendant and objects to the hearing of any parole evidence to prove the agreement alledged, because by law no verbal agreement relative to landed property can be proved by parole testimony, therefore prays that this action may be dismissed with costs.

The Court on considering the argument of the parties in this cause are of opinion that this suit be dismissed with costs to the defendant.

For by the laws of England, which are admitted in this cause, it is expressly declared that when any contract or sale is made of lands, tenements, and hereditaments no verbal promise shall be sufficient to ground an action upon 29 Char. 2, c. 3, and this cause is brought on a verbal contract merely.

Adjourned to Thursday next.

THURSDAY, 30th SEPTEMBER, 1790.

The Court met pursuant to adjournment.

Present: The same Judges.

Macaulay &
Markland
vs.
Moore W.
Hovendon.

The Sheriff returned on execution, that he has caused to be made of the lands and tenements of the defendant, the sum of fifty-nine pounds current money of the Province, which sum he is ready to pay the plaintiff in part satisfaction of their debt and costs, and further that the defendant has no more goods or chattels, land or tenements in this district whereof he could levy the residue of the said debt and costs.

Adjourned to Monday, the third day of January next (1791).

KINGSTON.

COURT OF COMMON PLEAS.

JANUARY TERM.

MONDAY, 3rd JANUARY, 1791.

The Court met pursuant to adjournment.

Present: The Honourable Richard Cartwright, Esq., and the Honourable Neil McLean, Esq.

The Governor having appointed Hector McLean one of the Justices of the Court of Common Pleas for this district, and the commission being ready he has taken his seat accordingly.

Robert Hamilton
and Richard Cart-
wright, Jun.,
merchants &
co-partners,
Plaintiffs,
Gottlieb Christian,
Baron de Reitzen-
stein, late of
Marysburgh,
Defendant.

The Sheriff returned that he has duly summoned the defendant to appear.

Richard Cartwright, Jun., one of the partners of the house of H. & C., appears in person and filed declaration.

The defendant being duly called made default. The plaintiff prays that default be recorded. The Court order that the default of the defendant be recorded as prayed.

John Lockart
Wiseman, of Mont-
real, in the Prov-
ince of Quebec,
Plaintiff,
George MaGinn,
of Fredericksburg,
Defendant.

The Sheriff returned that he has duly summoned the defendant to appear.

Archibald Thomson, of Kingston, appears for the plaintiffs, does produce his power of attorney which is allowed by the Court and filed.

The defendant being duly called made default. The plaintiffs pray that the default may be recorded.

The Court do order that the default be recorded accordingly.

The Sheriff returned that he has duly summoned the defendant.

Richard Cartwright, Jun., one of the partners of the said Hamilton & Cartwright, appears in person and filed the defendant's bond for the sum of seventy-six pounds, five shillings and twopence, current money of this Province, and at the same time the plaintiff observes to the Court that there is only remaining justly due on the said bond the sum of forty-one pounds, eight shillings and one penny currency aforesaid, and prays that judgment may be given accordingly. The defendant appears in person and acknowledges himself indebted to the plaintiffs the sum demanded by them.

The Court having considered the acknowledgment of the defendant to the said debt, do order and adjudge that the plaintiff shall recover of the defendant the said sum of forty-one pounds, eight shillings and one penny, together with costs of suit.

The Sheriff returned that he has duly summoned the defendant.

Thomas Markland, one of the said co-partners, appears in person and filed their account against the defendant, amounting to the sum of fourteen pounds, five shillings and eightpence currency of this Province.

The defendant appears in person and acknowledges himself indebted to the plaintiffs the sum demanded in their declaration.

The plaintiff prays that judgment be given accordingly. The Court do therefore order that the plaintiff may recover of the defendant the sum of fourteen pounds, five shillings and eightpence currency aforesaid, together with costs of suit.

It appears to the Court that the defendant has been summoned to appear by a writ not legally tested, and no proceeding can be had thereon.

The defendant moves that he may be allowed his costs and charges for his appearance here this day.

The Court having considered the motion of the defendant, do order that he may recover of the plaintiff the sum of twenty shillings and the plaintiff to pay costs.

The Sheriff returned that he has duly summoned the said defendants.

The plaintiff appears in person and demands of the defendants the sum of sixteen pounds currency of this province for their several promissory notes bearing date the eighteenth day of April, one thousand seven hundred and eighty-seven.

Robert Hamilton
& Richard Cartwright, of Kingston, merchants & co-partners,
Plaintiffs,
vs.

Richard Campbell,
of said place,
labourer,
Defendant.

Robert Macauley
and Thomas Markland, of Kingston, merchants & co-partners,
agt.

Richard Campbell,
of said place,
labourer,
Defendant.

Richard Ferguson
vs.
Conrood Vanduser.

Robert Clark, Esq.,
of Ernest-Town,
Plaintiff,
Thoms. Loyd &
Elisha Crane, of
Marysburg,
Defendants.

Elisha Crane appears in person and acknowledges himself jointly and severally with the said Thomas Loyd to be justly indebted to the plaintiff the said sum with lawful interest thereon.

The plaintiff having filed the said promissory notes, which with interest thereon amount to the sum of nineteen pounds, eleven shillings currency, aforesaid, prays that judgment may be given accordingly.

The Court having considered the acknowledgement of the defendant and examined the said notes exhibited and filed, do order that the plaintiff shall recover of the said defendants the sum of nineteen pounds, eleven shillings, with costs of suit.

Titus Simons, of
Kingston,
Plaintiff,

vs.

Joseph Allen, of
Adelphustown,
Defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed declaration.

The defendant appears in person and sayeth that he is not in the least indebted to the plaintiff.

The plaintiff replies that the defendant is indebted to him in manner as set forth in his said declaration, which he is ready to prove.

The defendant prays that he may be allowed time for trial and that this cause may be heard the next term.

The Court, on motion of defendant, do order that this cause may be tried as prayed.

Titus Simons
vs.
Joseph Allen.

(From last Term.)

The plaintiff appears in person and declares that he is now prepared for trial and that the cause may be now tried.

The defendant appears in person and prays that this cause may be tried next term for reason that his counsel cannot attend at this season of the year, from the badness of the roads between this and the place of his residence.

The Court, on motion of the defendant, do order that this cause may be tried as prayed.

The Court adjourned till Monday next, the tenth inst.

MONDAY, THE 10th JANUARY.

The Court met pursuant to adjournment.

Present: The three Judges.

Hamilton &
Cartwright
vs.

Gotlep C. Baron
de Reitrenstein.

(From the 3rd
inst.)

The defendant being this day again called duly made default.

Richard Cartwright, Esq., appears for plaintiffs and filed the said defendant's promissory note dated at Catarague the 20th day of November, in the year 1784, for the

sum of seventy-seven pounds, one shilling, Quebec currency, with interest calculated thereon amounting to the sum of twenty-five pounds, eight shillings and sixpence, said currency, and the plaintiff does likewise exhibit an account for sundries furnished the defendant, amounting to the sum of four pounds, eleven shillings and three-pence.

The plaintiffs having called Bryan Crawford, one of the subscribers' witnesses to the said notes, and this witness being duly sworn his deposition was filed accordingly.

The plaintiff being also duly sworn to the account exhibited against the defendant, the same was filed.

The Court having duly examined the several exhibits produced by the plaintiffs and considered the declaration of the plaintiff and the default of the defendant, do order and adjudge that the plaintiffs shall recover of the defendant the sum of seventy-seven pounds, one shilling for said note, and the sum of twenty-five pounds, eight shillings and sixpence for interest due on the same, likewise four pounds, eleven shillings and threepence for his account. In all amounting to the sum of one hundred and seven pounds and ninepence, lawful money of this province, together with costs of suit taxed at —.

The defendant being this day again duly called made default.

Mr. Thomson appears in person, and exhibits the defendant's notes for the sum of thirteen pounds, eight shillings and ninepence, with interest calculated thereon amounting to the sum of thirteen pounds, thirteen shillings.

The Court having duly examined the said notes and considered the default of the defendant do order and adjudge that the plaintiff may recover of the defendant the sum of thirteen pounds, thirteen shillings with costs of suit —three pounds, sixteen shillings and fourpence.

The Court adjourned to Saturday next.

John Lockhart
Wiseman
vs.
George McGinn.
(From Monday
last.)

SATURDAY, 15th JANUARY, 1791.

The Court met pursuant to adjournment.

Present: The Honourables Richard Cartwright, Neil McLean and Hector McLean, Esquires.

Peter Wartman appears and represents to the Court that he obtained judgment in this court against Lawrence Eldam, the ninth day of October last, for the sum of seven pounds, thirteen shillings and tenpence, of which the sum of four pounds, nine shillings and sixpence remains yet

unpaid, and that he hath just reason to suppose that there are monies of the said Eldam in the hands of the Sheriff, therefore prays that the Court will order that the Sheriff may be directed to satisfy the said judgment from the monies remaining in his hands belonging to the said Lawrence Eldam.

The Court do order that the Sheriff shall on the first day of March term next make a return on the execution issued against the said Lawrence Eldam.

The Court adjourned to March term next.

MARCH TERM.

THURSDAY, THE 17th OF MARCH, 1791.

The Court met pursuant to adjournment.

Present: The Honourables Richard Cartwright, Junr., Neil McLean, and Hector McLean, Esquires.

Richard Ferguson,
of Sophiasburg,
plaintiff,
vs.
Conrood Vanduser,
of _____,
defendant.

The Sheriff returned that he has duly summoned the said defendant.

The plaintiff appears in person and filed declaration.

The defendant also appears in person and saith that he is ready to plead.

The Court do order that the defendant may file his answer to the declaration of the plaintiff to-morrow.

James Clark, Sen.,
late of Kingston,
plaintiff,
vs.
John de Courcy
Gill, of
Fredericksburg,
defendant.

The Sheriff returned that he has duly summoned the said defendant.

James Clark, Junr., appears for the plaintiff and filed power of attorney from the plaintiff.

The defendant being duly called made default.

The Court on motion of the plaintiff do order that default be recorded.

John Howell, of
Sophiasburg,
plaintiff,
vs.
Joseph Wesley,
late of Kingston,
defendant.

The Sheriff returned that he has duly summoned the said defendant to be and appear.

John Ferguson appears for the plaintiff and filed warrant of attorney from the plaintiff.

The defendant being duly called made default.

The Court, on motion of the plaintiff, do order that default be recorded.

Conrood Vanduser,
of Adolphustown,
plaintiff,
vs.
Owen Richard &
John Richard.

The Sheriff returned that he has duly summoned the said defendant to be and appear.

The defendant being duly called made default.

The Court, on motion of the plaintiff, do order that default be recorded.

The Sheriff returned that he has duly summoned the said defendant.

The plaintiff appears in person and filed declaration.

The defendant also appears in person, and is ready to answer to the said declaration.

The plaintiff prays that the Court may order that the defendant shall plead at a short day.

The Court do order that the defendant shall plead to-morrow.

The Sheriff returned that he has duly summoned the said defendant.

James Dawson appears for the plaintiff and filed power of attorney from the plaintiff, likewise filed declaration.

The defendant appears in person and craves Oyer of said power of attorney, which was granted, and the said defendant saith that he is ready to plead to said declaration. It is ordered that the defendant may plead to-morrow.

The Sheriff returned that he has duly summoned the defendant.

The said Richard Cartwright, Jun., appears in person.

The said defendant also appears in person and acknowledges himself indebted to the plaintiffs the sum of thirty-seven pounds, nineteen shillings and fivepence lawful money of this Province.

The plaintiff prays judgment for the said sum of thirty-seven pounds, nineteen shillings and fivepence, with costs of suit.

The Court do consider and adjudge that the plaintiffs may recover of the defendant the said sum of thirty-seven pounds, nineteen shillings and fivepence, together with costs of suit.

The Sheriff returned that he has duly summoned the said defendant.

The said Richard Cartwright, Jun., appears in person and filed declaration.

Frederick Keller appears for said defendants and acknowledges themselves indebted to the plaintiffs as set forth in said declaration.

The plaintiff prays that the Court give judgment as demanded.

The Court do order and adjudge that the plaintiffs shall recover of the said defendant the sum of twenty-four pounds nine shillings and twopence for said debt, together with costs of suit.

John Cascallon, of
Fredericksburg,
plaintiff,

vs.

Ebenezer Wash-
burn, of said place,
defendant.

John Stringer, late
of Ernestown,
plaintiff,

vs.

Joshua Booth, of
the said place,
defendant.

Robert Hamilton &
Richard Cart-
wright, Jun.,
merchants,
of Kingston,
plaintiffs,

vs.

Barnabas Hough,
of Ernestown,
blacksmith,
defendant.

Robert Hamilton &
Richard Cart-
wright, Jun.,
merchants & co-
partners, of
Kingston,
plaintiffs,

vs.

Frederick Keller &
William Keller, of
Fredericksburg,
defendants.

Robert Hamilton
and Richard Cart-
wright, Jun.,
merchants, of
Kingston,
plaintiffs,
vs.
Mathew Dies, of
Fredericksburg,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The said Richard Cartwright, Jun., appears for plaintiffs.

The defendant being duly called made default.

The Court, on motion of the said plaintiff, do order that the said default be recorded.

John Ferguson,
of Sydney,
plaintiff,
vs.
Mathew Dies, of
Fredericksburg,
defendant.

The Sheriff returned that he has duly summoned the said defendant.

The plaintiff appears in person and filed declaration.

The defendant being duly called made default.

The Court, on motion of the plaintiff, do order that default be recorded.

The Honourable Richard Cartwright, Esq., one of the Judges, withdrew from the Bench during the proceedings on the four last actions.

Titus Simons,
plaintiff,
Joseph Allen,
defendant.
(From last term.)

The plaintiff appears in person.

The defendant being duly called made default.

The Court being well informed that the defendant could not attend owing to his very bad state of health.

The Court do therefore consider that this cause may be tried next term.

Titus Simons,
plaintiff,
vs.
Joseph Allen,
defendant.
(From last term.)

For the same reason as alledged in the foregoing cause the Court do order that this action may be heard next term.

Adjourned until to-morrow at ten o'clock in the forenoon.

FRIDAY, THE 18th DAY OF MARCH, 1791.

The Court met pursuant to adjournment.

Present: The same Judges.

Richard Ferguson
vs.
Conrood Vanduser.
(From yesterday.)

The defendant appears in person and saith that he is not indebted to the plaintiff the sum demanded in his declaration, nor any part thereof.

The plaintiff appears in person and says that the defendant is indebted to him as set forth in his said declaration, which he is ready to prove.

The defendant prays that this trial may be ordered for next term, as the defendant cannot sooner procure papers necessary to defend his cause.

The Court on motion of the defendant do order that this cause may be tried next term as prayed.

The defendant appears in person and prays that the default of yesterday may be taken off.

James Clark, Sen.,
vs.
John Dec'y Gill.

The Court do order that default be taken off, on paying costs.

The defendant acknowledges himself indebted to the plaintiff in the sum of seventeen pounds, two shillings and threepence.

The plaintiff prays that judgment may be given for the sum acknowledged by the defendant, with costs of suit.

The Court do order and adjudge that the plaintiff may recover of the defendant the sum of seventeen pounds, two shillings and threepence, together with costs of suit.

The defendant appears in person and saith that the plaintiff hath no cause of action against him, for that the plaintiff's demand against him is for a certain note sold him at an under value, in order to take off all trouble and risque of said note from the defendant, and not transferred in the ordinary course of business, as appears more fully from the plaintiff's written obligation bearing date the 26th day of Nov., 1790, now exhibited and filed, containing only this condition, viz., that is to say, that if the said plaintiff was last in an action now in the hands of Richard Cartwright, Esq., and Thomas Markland, and to be finally determined by them by arbitration, then the transfer of the note to be absolute and at the risque of the plaintiff, which condition having happened the defendant does not consider himself to have any further concern in said note. The defendant further saith that the plaintiff, being indebted to the drawer of the said note, had it in his power, and still has it in his power, to recover the said note. The defendant also says that it appears the plaintiff had a design to take undue advantage of him, as he did not take out a writ in this action until eight days after the plaintiff was summoned at the suit of the defendant; and had taken occasion from this summons not being returnable until the twenty-third inst. to have this business previously brought forward.

John Cascallon
vs.
Ebenezer Washburn.

(From yesterday.)

The plaintiff prays time until to-morrow to make his reply.

The Court, on motion of the plaintiff, do order that this cause may be heard to-morrow.

The defendant appears in person, and saith that the said James Dawson is empowered by the plaintiff to sue for a lot of ground No. 39, and that the defendant is not in possession of any such lot; and that the defendant in his declaration hath sued for a lot of ground No. 40,

John Stringer
vs.
Joshua Booth.

(From yesterday.)

which he hath no authority to do, and prays that the Court may dismiss this action with costs.

The Court having duly examined the power of the said Dawson, exhibited and filed, it appears that he is not legally authorised to sue for the defendant for a lot of ground No. 40, as stated in his declaration, but a certain lot No. 39. Therefore consider that this cause may be dismissed and that the plaintiff do pay costs, and that the defendant shall recover ten shillings for his costs.

The Court adjourned until to-morrow at ten o'clock.

SATURDAY, 19th MARCH, 1791.

The Court met pursuant to adjournment.

Present: The same Judges.

John Cascallon
vs.
Ebenezer
Washburn.

The plaintiff appears in person, and prays to withdraw his action against the defendant. Whereupon the Court do consider that judgment of non-suit be entered.

The Court adjourned until Wednesday next.

WEDNESDAY, THE 23rd MARCH, 1791.

The Court met pursuant to adjournment.

Present: The same Judges.

John Cumming, of
Kingston, Mer-
chant, plaintiff,
vs.
Alex'r Simson, of
Fredericksburg,
defendant.

The Sheriff returned that he has duly summoned the defendant: the plaintiff appears in person and filed declaration, likewise the defendant's promissory note, bearing date the 7th day of March, 1789, for the sum of thirty-seven pounds and eightpence.

The defendant also appears in person and acknowledges himself indebted to the plaintiff, in manner as set forth in his declaration.

The Court having considered the acknowledgment of the defendant and examined the note filed by the plaintiff, do order and adjudge that the plaintiff may recover of the defendant the sum of forty pounds, ten shillings and one penny for principal and interest, with costs of suit.

Alex'r Clark, of
Fredericksburg,
plaintiff,
vs.
Collin MacKenzie,
of Ernestown,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed declaration.

The defendant also appears in person, and saith that he is not indebted, as set forth in said declaration, for that the said draft was given without a valuable consideration.

The plaintiff saith that the defendant is indebted to him as set forth in his declaration, and that the said draft was given him by the defendant for his certain promissory note.

The Court do order that the parties may appear to-morrow, to plead to this action.

The Sheriff returned that he has duly summoned the defendant.

Richard Cartwright, Jun., appears for the said plaintiffs, and filed declaration.

The defendant appears in person and acknowledges himself indebted to the plaintiffs in manner as set forth in said declaration.

The plaintiff having filed the said note,

The Court do consider that the plaintiffs shall recover of the defendant the sum of twenty-two pounds, nine shillings and twopence for said note, with nine pounds, five shillings and one penny for interest due thereon, together with costs of suit.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed declaration.

The defendant appears in person and acknowledges himself indebted to the plaintiffs the sum demanded in the said declaration.

The Court therefore consider that the plaintiff may recover of the defendant the sum of sixty-five pounds, seven shillings and elevenpence currency, with costs of suit.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant appears in person and saith that he is not indebted to the plaintiff as set forth in his declaration.

The plaintiff further saith that the defendant is indebted to him in manner as set forth in his declaration which he is ready to prove.

On motion of the defendant the Court do order that this cause may be tried to-morrow.

The Sheriff returned that he has duly summoned the defendant.

The said Thomas Markland appears for the plaintiffs and filed declaration.

The defendant appears in person and acknowledges himself indebted to the defendant the sum of thirty-three pounds, four shillings and ninepence halfpenny currency.

Robert Hamilton &
Rich'd Cartwright,
Jun., of Kingston,
merchants & co-
partners,
plaintiffs,

vs.

Alex'r Simpson, of
Fredericksburg,
defendant.

Joseph Forsyth &
Co., merchants, of
Kingston,
plaintiffs,
George McGinn, of
Fredericksburg,
defendant.

Ebeneser Wash-
burn, of
Fredericksburg,
plaintiff,

vs.

George McGinn,
of said place,
defendant.

Robert Macaulay
and Thomas Mark-
land, of Kingston,
merchants,
plaintiffs.

vs.

George McGinn, of
Fredericksburg,
defendant.

The plaintiff prays that judgment may be given for the sum acknowledged by the defendant.

The Court postponed giving judgment in this cause, and suspended judgment given against the defendant at the suit of Joseph Forsyth & Co. until the action instituted by Ebenezer Washburn against the defendant shall be determined, that no undue advantage shall be had by either of the parties who have instituted actions against the defendant.

John Ferguson,
plaintiff,
vs.
John Cascallen,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant also appears in person and saith that he is in nothing guilty of the premises as set forth in said declaration.

The plaintiff persists in saying that the defendant is guilty in manner as set forth in his declaration, which he prays may be inquired of by the country.

The Court do order that a venire may issue returnable on Saturday next to try the issue.

The Court adjourned until to-morrow.

THURSDAY, THE 24th MARCH, 1791.

The Court met pursuant to adjournment.

Present: The same Judges.

Robert Hamilton &
Richard Cartwright, merchants,
of Kingston,
plaintiffs,

vs.
Mathew Dies, of
Fredericksburg,
defendants.

The said Richard Cartwright appears in person.

The defendant being again duly called this day made default.

The plaintiff prays that default be recorded, and exhibit and filed the defendant's promissory note bearing date the third day of September, 1783, likewise an account against the defendant amounting to the sum of fifty pounds, thirteen shillings, currency money of this province, and the plaintiff upon oath declares that the said account has been frequently tendered for payment.

The Court not being prepared to give judgment in this action will take time to deliberate.

John Ferguson,
of Sydney,
plaintiff,
vs.
Mathew Dies, of
Fredericksburg,
defendant.

The plaintiff appears in person.

The defendant being again duly called made default.

The plaintiff prays that default may be recorded, and filed his account against the defendant.

The Court having examined the account filed and the plaintiff not having any other proof to offer the Court

it is considered that the Court will deliberate thereon, and do order that the plaintiff may produce such other proofs as he may be able to substantiate his demand against the defendant.

The plaintiff prays that this cause may be ordered to be more fully heard on the first return day of next term.

The Court, upon motion of the plaintiff, do order that this cause may be tried as prayed.

Richard Cartwright, Esq., withdrew from the bench during the proceeding in the two last actions against Mathew Dies.

Peter Clark appears for the plaintiff and filed power of attorney.

Conrood Vanduser
vs.
Owen Richards,
John Richards.

The said defendant being again duly called made default.

On motion of the plaintiff the Court do order that he proceed to prove his demand against the defendant.

The plaintiff produced and filed the defendants' joint promissory note for the sum of twenty-six pounds, six shillings and sevenpence, on which there appears to be due only the sum of twenty-three pounds, eighteen shillings and eightpence and halfpenny, and prays that judgment may be given against the said defendant for that sum.

The Court having duly examined the said note filed, and considered the several defaults of the defendants, do order and adjudge that the plaintiff shall recover of the defendants the sum of twenty-three pounds, eighteen shillings and eightpence halfpenny for principal and interest due on the said note, together with costs of suit.

The plaintiff appears by John Ferguson his attorney.

The defendant being again duly called made default.

John Howell
vs.
Joseph Westly.

The plaintiff prays that the Court will proceed to take proof of the debt demanded by the plaintiff in his declaration, and filed his account against the defendant, and also deposed that the defendant had acknowledged the debt, as appears by his deposition taken and filed, but not being able to make it appear to the satisfaction of the Court that the said debt has not been discharged since that time.

On motion of the plaintiff the Court do order further proceedings in this cause may be stayed until the first return day of next term.

The plaintiff appears in person and filed the said draft stated in his declaration bearing date the fifth day of March, 179.., for the sum of twelve pounds, eighteen shillings and ninepence currency drawn on Messrs.

Alexander Clark
vs.
Collin McKenzie.

Macauley & Markland, which the plaintiff saith he has duly presented, but not accepted by them.

The defendant also appears in person and produces his promissory note payable to John Blake, or order, which note he acknowledges to have received from the plaintiff for his draft on Macauley & Markland.

The Court having fully heard the parties, likewise examined the several exhibits filed, do consider that the plaintiff shall recover of the defendant the sum of twelve pounds, eighteen shillings and ninepence for his said draft, together with costs of suit.

Ebenezer
Washburn
vs.
George McGinn.

The plaintiff appears in person and filed the defendant's bond bearing date, etc., as set forth in his declaration.

The defendant also appears in person and saith that the bond exhibited by the defendant is not a true bond, but acknowledges himself indebted to the plaintiff the sum of thirteen pounds, twelve shillings and fourpence.

The plaintiff prays that judgment may be given for the sum acknowledged by the defendant.

The Court do therefore consider that the plaintiff may recover of the defendant the sum of thirteen pounds, twelve shilling and fourpence for this debt, together with costs taxed at

Macauley &
Markland
vs.
George McGinn.

Thomas Markland appears for the plaintiffs and prays that judgment may be given against the defendant for the sum acknowledged by him.

The Court having considered the acknowledgment of the defendant in this cause, do order and adjudge that the plaintiffs shall recover of the defendant the sum of thirty-three pounds, four shillings and ninepence currency, with costs of suit.

The Court adjourned until Saturday next.

SATURDAY, 26th MARCH, 1791.

The Court met pursuant to adjournment.

Present: The same Judges.

Hamilton &
Cartwright
vs.
Mathew Dies.

Richard Cartwright appears for plaintiffs and prays that the Court may proceed to give judgment in this cause.

The Court having duly examined the return made by the Sheriff on the original writ of summons, likewise observed the several defaults made by the defendant and the several exhibits filed by the plaintiffs in this cause, do

consider that the said plaintiffs shall recover of the said defendant the sum of fifty pounds, thirteen shillings, lawful money of this province for balance due on the defendant's promissory note with interest thereon calculated, with costs of suit.

The plaintiff having obtained a writ of execution from this Court against the goods and chattels of the defendant directed to the Sheriff of the district of Lunenburg: The said Sheriff has returned thereon, that he has caused to be levied of the goods and chattels of the said Alex'r. Grant the sum of twenty-five pounds, seven shillings and sixpence, current money of this province, together with his own fees.

Hamilton &
Cartwright
vs.
Alex'r Grant.

The plaintiff appears in person.

The defendant also appears in person.

The Sheriff returned venire.

The plaintiff prays that the jury be called and sworn.

John Ferguson
vs.
John Cascallen.
(From Thursday
last.)

The Jurors called and sworn were:—

- | | |
|----------------------|-----------------------|
| 1. Honjost Herkimer. | 7. James Robins. |
| 2. Michel Grass. | 8. Donald McDonell. |
| 3. John Everett. | 9. David Brass, |
| 4. Robert Macaulay. | 10. Arch'd Thomson. |
| 5. Thoms. Markland. | 11. Christ'r Georgen. |
| 6. James Richardson. | 12. John Duncan. |

The plaintiff having informed the Court and jury of the nature of this action, as stated in his declaration prays that Joseph Forsyth, merchant, of Kingston, may be called and sworn.

The said Joseph Forsyth being called and sworn, deposes that sometime in the course of the last week that the defendant came to his house and said to this deponent: that the plaintiff had in his possession a certain note of the defendant's for fifty pounds, which said note was obtained in a fraudulent manner.

The plaintiff produced in evidence a certain writing subscribed with the defendant's own hand.

The defendant prays that no written evidence may be taken in this cause, because that the defendant is charged in the declaration for words spoken only.

The plaintiff saith that his declaration sets forth, speaking, uttering, and publishing, and that the said writing is publishing.

The Court over-rule the motion of the plaintiff and order that no written evidence can be given in this cause,

for reason that the damages laid in his declaration are for speaking only.

Evidence for plaintiff sworn: Joseph Forsyth, Titus Simons, Hazelton Spencer.

Evidence for defendant sworn: Ebenezer Washburn, Dan'l McMullan, Rich'd Cartwright, Jun.

The jury withdrew to consider of their verdict, and, having returned into court, by their foreman, Robert Macauley, gave their verdict for the defendant.

The Court will take time to consider of the verdict of the jury.

The Court adjourn until Thursday next.

THURSDAY, THE 31st DAY OF MARCH, 1791.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., and Neil McLean, Esquires.

Donald McDonell,
of Kingston,
merchant,
plaintiff,
vs.
Mathew Dies, of
Fredericksburg,
in said district,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

Alexander McDonell appears for the defendant, and produces the defendant's warrant of attorney to acknowledge judgment in this cause for the sum demanded in the declaration.

The plaintiff prays that the Court will give judgment.

The Court having duly considered the defendant's said warrant of attorney filed, do order and adjudge that the plaintiff shall recover of the defendant the sum of twenty-five pounds, twelve shillings and elevenpence, current money of this Province with costs of suit.

Robert Macauley,
of Kingston,
merchant,
plaintiff,
vs.
Mathew Dies, of
Fredericksburg,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration, likewise the said notes, of tenor and date as set forth in said declaration, which are filed.

Alexander McDonell appears for the defendant and filed warrant of attorney, acknowledging the plaintiff's demand as set forth in his said declaration.

The plaintiff prays that judgment may be given thereon.

The Court having duly examined the said warrant of attorney, likewise the note, filed, do consider that the plaintiff shall recover of the defendant the sum of thirty-two pounds, eleven shillings and tenpence for said notes

with six pounds, six shillings and elevenpence currency for interest due thereon, together with costs of suit.

The plaintiff appears in person and prays for a new trial in this cause, for reasons, filed.

The plaintiff likewise prays that the deposition be taken of the foreman of the jury and of one other of the jurors.

The defendant appears in person and acknowledges that he had caused to be conveyed to the jury, a certain paper containing the substance of his pleadings in court.

Robert Macauley, foreman of the jury in this cause, upon oath declares: That the verdict of the jury was intended and agreed upon before their coming into court; That the defendant should have five shillings damages, but that was only to be mentioned should the Judge require to know what damage the defendant had sustained.

Donell McDonell, one of the jurors in this cause, upon oath, declares that the verdict of the jury in this cause, was intended and agreed upon by the jury that the defendant should recover only five shillings damages from the plaintiff.

The Court will take time to consider the motion of the plaintiff for a new trial, and that judgment on the verdict of the jury may be postponed until next term.

The court adjourned until Friday, the first day of July next.

John Ferguson
vs.
John Cascallon.

FRIDAY, 1st JULY, 1791.

July term.

The court met pursuant to adjournment.

PRESENT:

The Honourables Rich'd Cartwright, Jun., Neil McLean, Hector McLean, Esquires.

The plaintiff appears in person and prays that this cause may be tried next term.

The Court do order that this cause may be tried as prayed, there being no opposition made on the part of the defendant.

John Ferguson,
plaintiff,
vs.
Mathew Dies,
defendant.
(From last term.)

John Ferguson appears for the plaintiff and prays that this cause may be tried on Friday next, and that the attestation of the said plaintiff may be now taken.

The plaintiff having duly attested his account filed against the defendant, the Court order that this cause may be tried as prayed.

The Sheriff returned that he has duly summoned the defendant to appear.

John Howell,
plaintiff,
vs.
Joseph Westly,
defendant.
(From last term.)

William Cox,
of Adolphustown,
plaintiff,

vs.
Joseph Allen,
of said place,
defendant.

The plaintiff appears in person and filed his declaration.

The defendant also appears in person and saith that he is not indebted to the plaintiff.

The plaintiff in reply saith that the defendant is indebted to him in manner as set forth in his declaration, which he is ready to prove.

Bernard Englehart

vs.
George Fiele.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

Chirk Viele appears in person and saith that he has been summoned by a wrong name, and prays that he may be dismissed from this action.

The said defendant maketh oath that his name is Chirk Viele and not George Fiele as entered in the summons and declaration. Therefore order that he be dismissed with costs.

Alexander
Chisholm,
of Thurlow,
plaintiff,

vs.
William Johnson,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant also appears in person and saith that he is in nothing guilty of the premises laid to his charge in said declaration. That he is in possession of the lot of ground set forth in the declaration, but that the plaintiff hath no right or title to it.

The plaintiff saith that the defendant is guilty in manner aforesaid, which he is ready to prove.

The defendant prays that this cause may be ordered for trial next term, that his witnesses are not in this district.

The Court do order on motion of the defendant that this cause be tried as prayed, and that the parties do appear in this court on the first return day of next term.

John Trompour, of
Adolphustown,
plaintiff,

vs.
Peter VansKiver,
of said place,
defendant.

The Sheriff returned that he has duly summoned the said defendant.

The plaintiff appears in person and filed his declaration.

The defendant being duly called made default.

The plaintiff prays that default be recorded.

The Court order accordingly.

John Mosier,
of Kingston,
plaintiff,

vs.
James Gale, of said
place, defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed declaration.
The defendant being duly called made default.
The plaintiff prays that the default be recorded.
Ordered accordingly.

The Sheriff returned that he has duly summoned the defendant. James Dawson appears for the plaintiff and filed power of attorney.

The defendant also appears in person and saith that he is in possession of the lot of ground stated in the declaration, but that the plaintiff hath no right or title to it.

The plaintiff saith that the lot of ground in question is the property of the said Jno. Stringer, as set forth in the declaration, and prays time to produce his evidence.

The Court order that this cause may be tried next term.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant also appears in person and acknowledges himself indebted to the plaintiff the sum set forth in said declaration.

The plaintiff prays that judgment be given accordingly.

The Court do therefore consider that the plaintiff shall recover of the said defendant the sum of twelve pounds, eleven shillings and fourpence halfpenny currency of this Province with costs of suit.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant also appears in person and saith that he is not indebted to the plaintiff in manner as set forth in said declaration.

The plaintiff in reply saith that the defendant is indebted to him in manner as set forth in declaration.

The defendant prays time may be allowed him to plead further to this action.

The Court order that this cause may be tried next term and that the parties do appear in this court on the first day of next term.

The Sheriff returned that he has duly summoned the said defendant.

The plaintiff appears in person and filed declaration.
The defendant being duly called made default.

John Stringer,
late of Ernestown,
plaintiff,
vs.
Joshua Booth,
of said place,
defendant.

John Howell,
of Sophiasburg,
plaintiff,
vs.
William McKay,
defendant.

Donald McDonell,
of Kingston,
merchant,
plaintiff,
vs.
William MacKay,
of said place,
defendant.

Peter Clark,
plaintiff,
vs.
James Gale,
of Kingston,
defendant.

Robert Hamilton
and Rich'd Cart-
wright, Jun., of
Kingston,
merchants,
plaintiffs,
vs.
Timothy Prindle,
of Marysburg,
yeoman,
defendant.

The plaintiff prays that the default be recorded. Ordered accordingly.

The Sheriff returned that he has duly summoned the defendant.

Rich'd Cartwright, Jun., appears for the said plaintiffs and filed declaration.

The defendant appears in person and acknowledges himself indebted to the plaintiffs the sum demanded in said declaration.

The plaintiffs prays that judgment be given accordingly.

The Court therefore consider that the plaintiff may recover of the said defendant the sum of twenty-four pounds and sixpence halfpenny currency of the Province with costs.

Robert Hamilton
and Richard
Cartwright, Jun.,
of Kingston,
merchants,
plaintiffs,
vs.
John Edgar, of said
place, defendant.

The Sheriff returned that he has duly summoned the defendant.

Richard Cartwright, Jun., appears for the plaintiffs and filed declaration.

The defendant also appears in person and acknowledges himself indebted to the plaintiffs the sum demanded in said declaration.

The plaintiff prays that judgment may be given accordingly.

The Court having considered the acknowledgment of the defendant do adjudge that the plaintiffs may recover of the said defendant the sum of thirty-two pounds, three shillings and fourpence currency of this Province with costs.

Richard Cart-
wright, Jun.,
of Kingston,
plaintiff,
vs.
James Gale,
gentleman,
of same place,
defendant.

The Sheriff returned that he has duly summoned the defendant to appear.

The plaintiff appears in person and filed declaration.

The defendant being duly called made default.

The plaintiff prays that default be recorded. Ordered accordingly.

Robert Hamilton
& Richard Cart-
wright, Jun.,
of Kingston,
merchants,
plaintiffs,
vs.
Alex'r McKenzie,
of Pittsburgh, late
En's in the Regmt
of Royal Yorkers,
defendant.

The Sheriff returned that he has duly summoned the defendant to appear.

The plaintiff appears in person and filed declaration.

The defendant being duly called made default.

The plaintiff prays that default be recorded. Ordered accordingly.

Hamilton &
Cartwright
vs.
Baron de
Reitrenstein.
(From 10th
January, 1791.)

The Sheriff returned that he has seized and taken in execution, three several lots of ground in the first Concession of the Township of Marysburg, Nos. one, seventeen and twenty-seven, containing six hundred acres less or

more, which he has advertised to be adjudged to the highest bidder on the twenty-eighth day of October next.

The parties personally appear and do mutually agree on motion of the defendant that a venire may issue, returnable on Wednesday next. Ordered accordingly.

The parties personally appear and mutually agree that this cause may be tried on Thursday next. Ordered accordingly.

Ordered by consent of parties for next term.

The Sheriff returned that he has taken in execution a lot of land in the first Concession of Fredericksburg, No. twenty, containing one hundred acres, with a dwelling house thereon built, which he has advertised to be sold to the highest bidder on the eighteenth day of August next.

The Sheriff returned that he has seized and taken in execution a lot of land in the first Concession of Fredericksburg, No. sixteen, containing two hundred acres, with a dwelling house thereon, also a frame, which he has advertised to be sold to the highest bidder on the eighteenth day of August next.

The Sheriff returned that he has seized and taken in execution a lot of land in the first Concession of Fredericksburg, No. twenty-five, containing two hundred acres, with a house and barn thereon, which he has advertised to be sold according to law on the twenty-seventh day of October next.

The Sheriff returned that he has seized and taken in execution a lot of land in the first Concession of Fredericksburg, No. twenty-five, containing two hundred acres, with a house and barn thereon, which he has advertised to be sold according to law on the twenty-seventh day of October next.

The Sheriff returned that he has taken and seized in execution a lot of land in the first Concession of Fredericksburg, number sixteen, containing two hundred acres, with a dwelling house and barn thereon, also a new frame for a dwelling house, all of which he has advertised to be sold according to law, on the eighteenth day of August next.

Titus Simons,
plaintiff,
vs.
Joseph Allen,
defendant.
(From last term.)

Titus Simons,
plaintiff,
vs.
Joseph Allen,
defendant.
(From last term.)

John Ferguson
vs.
John Carscallan.
(From last term.)

Hamilton & Cartwright
vs.
Mathew Dies.
(From March term.)

Macaulay and Markland
vs.
George McGinn.
(From 24th March last.)

Macaulay & Markland
vs.
John Howard, Sen.
(From 8th July, 1790.)

Joseph Forsyth
vs.
John Howard, Sen.
(From 8th July, 1791.)

Joseph Forsyth & Co.
vs.
George McGinn.
(From 24th March last.)

Ebenezer
Washburn
vs.
George McGinn.
(From 24th March
last.)

The Sheriff returned that he has seized and taken in execution three milch cows which will be sold to the highest bidder on the eighteenth day of August next. The court adjourned to Wednesday next.

WEDNESDAY, 6th JULY, 1791.

The Court met pursuant to adjournment.

PRESENT:

Richard Cartwright, Jun., Neil McLean, Hector McLean, Esquires.

Titus Simons,
plaintiff,
vs.
Joseph Allen,
defendant.
(From last Friday.)

The Sheriff returned the venire.
The plaintiff appears in person.
The defendant also appears in person.

The Jury called and sworn were:—

- | | |
|----------------------|-----------------------|
| 1. Joseph Forsyth. | 7. James Russell. |
| 2. David Brass. | 8. Christ'r Georgen. |
| 3. James Richardson. | 9. Malon Knight. |
| 4. George Young. | 10. Sam'l Ainsley. |
| 5. John Duncan. | 11. Joseph Pritchard. |
| 6. John Everett. | 12. John Trompour. |

Evidence for plaintiff sworn. Joseph Forsyth, Bryan Crawford, Barnabas Day.

Upon motion of the plaintiff the depositions of Charles Bennett and Nathan Brisco were openly read and filed.

Evidence called by the defendant and sworn. Oliver Church, Esq., John Mosure, Muajah Purdy, Emanuel Elderbee, Amos Ainsley.

The jury withdrew to consider of their verdict and having returned into court by their foreman, Joseph Forsyth, of Kingston, say that they find a verdict for the defendant.

The Court not being prepared to give judgment will take time to deliberate.

Macaulay & Mark-
land
vs.
George McGinn.

Thomas Markland appears and prays that the Sheriff may be ordered to shew cause why he has not duly executed the writ of execution to him directed in this cause in not seizing the moveables belonging to the defendant.

The Sheriff also appears and prays the Court to allow him to amend the returned said execution.

The Court do order that the Sheriff may be allowed to amend the return as prayed. Returnable on Friday next.

Adjourned until to-morrow at 10 o'clock.

THURSDAY, 7th JULY, 1791.

The Court met pursuant to adjournment.

PRESENT: The same Judges.

The plaintiff appears in person and filed his account against the defendant. Balance in his favor one hundred and fifty-two pounds, nineteen shillings and sixpence.

The defendant also appears in person and sayeth that he is not indebted to the plaintiff and that the account now exhibited has been already finally settled, which he is ready to prove, and that he never received any rum from the plaintiff by the quantity of 5 gals. and charged in said account, and prays that this evidence may be called.

The depositions of Will'm Bell and John McMahan were taken and filed on motion of the defendant.

The defendant filed the account formerly delivered him by the plaintiff and settled, prays that the several exhibits filed in this court in a certain cause: Allen against Simons last September term, may be produced.

The Court do order the Clerk that the said exhibit may be produced as prayed.

The plaintiff prays that the deposition of John German may be taken.

The deposition was taken and filed as prayed.

The Court will take time to deliberate and give judgment in this cause to-morrow.

Peter Clark appears for the plaintiff and filed warrant of attorney.

The defendant appears in person and by consent of parties, the Court do order that this action may be determined by arbitration, and the parties have agreed that James Robins and James Clark shall be the arbitrators.

The Court do order that the said award shall be given in writing before the last day of this month.

Titus Simons
vs.
Joseph Allen.
(From Friday last.)

William Cox
vs.
Joseph Allen.

FRIDAY, 8th JULY, 1791.

The court met pursuant to adjournment.

PRESENT: The same Judges.

The Court having examined the papers, and duly weighed the evidence produced in this cause, and it being also fully within their own knowledge and recollection that on a former trial instituted by the now defendant

Titus Simons
vs.
Joseph Allen.
(From yesterday)

against the plaintiff, did ground his defence on a final settlement which he averred and attempted to prove had taken place between him and the now defendant on the third of October, one thousand seven hundred and eighty-nine, alleging that the note witnessed by William Bell, was then given by him, the now plaintiff Simons, to the defendant Allen, in full of all debts due the said Allen by the said Simons; are fully satisfied that a final settlement and liquidation of accounts by the defendant, did at that time actually take place between the parties; and that the plaintiff's demand for monies, etc., previous to that period, is a most impudent attempt to prevent the forms of law to the purposes of knavery and injustice. But from the avowal of the defendant and other circumstances there appears to have been transactions between him and the plaintiff whereby the defendant is indebted to him in the sum of four pounds, nineteen shillings and sixpence.

The Court do consider that the plaintiff shall recover of the defendant the aforesaid sum of four pounds, nineteen shillings and sixpence debt with twenty-two shillings and twopence costs, which would have accrued had the action been brought as it ought, for a sum under ten pounds sterling.

Articles allowed by the Court are as following:—

| | |
|--|---------|
| 101¼ gals. rum at 7s. cost price | £3 11 9 |
| An entertainment | 13 4 |
| Rum and cheese to servants | 5 0 |
| Paid E. Hicks | 9 5 |
| | <hr/> |
| | £4 19 6 |

The other articles charged under dates posterior to the third of October, being by the plaintiff's own allowance in order of time prior thereto.

Robert MacAuley &
Thomas Markland,
merchants & co-
partners, of King-
ston, plaintiffs,
vs.
John Cascallan, of
Fredericksburg,
in said district,
defendant.

The Sheriff returned that he has duly summoned the said defendant.

Thomas Markland for the plaintiffs appears in person and filed declaration.

The defendant being duly called made default.

The plaintiffs prays that default be recorded.

The Court do order that default be recorded as prayed.

George Magin, of
Fredericksburg,
plaintiff,

vs.
Archibald Grant,
William Crawford,
of said place,
defendants.

The Sheriff returned that he has duly summoned the said defendants.

Donald McDonell appears for the said plaintiffs and filed warrant of attorney.

The defendant being duly called made default. Ordered accordingly.

The Sheriff returned that he has duly summoned the defendant to appear.

The plaintiff appears in person and filed declaration.

The defendant being duly called made default.

The plaintiff prays that default be recorded.

Ordered accordingly.

James Clark,
of Kingston,
plaintiff

vs.

John deCourcy
Gill, of
Fredericksburg,
defendant.

The Sheriff returned that he had taken and seized in execution a lot of land in the first Concession of Fredericksburg, No. sixteen, containing two hundred acres, with a house and barn, and a frame for a house thereon, not being able to come at any of the moveables of the said George McGinn, he having locked his doors and conveyed his cattle off the farm aforesaid to some place unknown to the Sheriff, he has therefore advertised according to law the above-mentioned lot of land, house, etc., for sale, on the eighteenth day of August next.

Macauley & Mark-
land

vs.

George Magin.
(From Wednesday
last.)

John Ferguson appears for the plaintiffs and prays that judgment may be entered against the defendant.

The Court having duly considered the default of the defendant, likewise examined the several exhibits filed in this cause, do consider that the plaintiff shall recover of the defendant the sum of thirty-two pounds, sixteen shillings and fourpence halfpenny currency for his debt, with costs of suit.

John Howell

vs.

Joseph Westly.
(From Friday last.)

The plaintiff appears in person and exhibited the agreement set forth in his declaration.

The defendant being again duly called again made default.

The plaintiff informs the Court that the said lot of land sold him by the defendant, does not contain more than one hundred and fifty acres, and that the defendant never had possession of more than the said one hundred and fifty acres of land in the Township of Sophiasburg, and that he has never received any compensation in land or otherwise for the deficiency in the aforesaid agreement.

On motion of the plaintiff the evidence of Alxr. Atkin and Jno. German is taken and filed.

The Court will deliberate.

The plaintiffs appears in person and filed his account against the defendant.

The defendant being duly called again made default.

The said Richard Cartwright having duly attested the

John Trompour

vs.

Peter Vanskiver.
(From last term.)

Robert Hamilton
and Richard
Cartwright

vs.

Alex'r McKenzie.
(From Friday last.)

account filed prays that judgment may be given against the defendant.

The Court having considered the default of the defendant, likewise examined the several exhibits filed, do adjudge that the plaintiff may recover of the defendant the sum of twenty pounds, four shillings and tenpence currency with costs of suit, taxed at three pounds, eight shillings and sevenpence currency.

Robert Hamilton
& Richard
Cartwright
vs.
James Gale,
defendant.

The defendant having been again duly called made default.

The plaintiffs appear by Richard Cartwright and filed the several acknowledgments of the defendant set forth in their declaration, and prays that judgment may be given against the defendant.

The Court having considered the several defaults made by the defendant, likewise examined the several exhibits filed in this cause, do order and adjudge that the said plaintiffs may recover of the defendant the sum of thirty-six pounds, three shillings and sixpence currency for their debt, with costs of suit taxed at five pounds, six shillings and sevenpence.

John Mosure
vs.
James Gale.
(From last Friday.)

The plaintiff appears in person.

The defendant being again duly called made default.

The plaintiff exhibited and filed his certain promissory note payable to John Gallaway for the sum of twenty-five pounds, bearing date the 24th day of May, 1786, and it appears by the evidence of James Robins that the said note was granted for security to the said Gallaway for a debt due him by the defendant, and it appears that the plaintiff has paid his said note. It appears to the Court by the acknowledgment of the plaintiff as well as his written obligation filed that he has received property of the defendant's amounting to the sum of eight pounds, fifteen shillings.

The Court having considered the default of the defendant and examined the several exhibits filed do adjudge that the plaintiff shall recover of the defendant the sum of twenty pounds, nineteen shillings and threepence for his debt and interest with costs of suit.

Peter Clark
vs.
James Gale.
(From Friday
last.)

The plaintiff appears in person and filed the note and account set forth in his declaration.

The defendant being again duly called made default.

The plaintiff prays that judgment may be given against the defendant.

The Court having considered the default of the defendant, likewise the several exhibits filed, do adjudge that

the plaintiff may recover of the defendant the sum of twelve pounds, fifteen shillings and fivepence with costs.

The court adjourned until Monday next.

MONDAY, 11th JULY.

The court met pursuant to adjournment.

PRESENT: The same Judges.

Peter Clark appears for the plaintiff and filed warrant of attorney, and prays the Court that judgment may be given in this cause.

John Trompour
vs.
Peter Vanskiver.
(From the 9th inst.)

It appears from the evidence in this cause that the plaintiff bought from the defendant three hundred and fifty acres of land, of which from the situation of the ground, unknown to the parties at the time of sale, there is in fact not over one hundred and fifty acres, the second Concession being entirely wanting. On these, by the testimony of Mr. German, there appears to have been improvements of considerable value, and there appearing to be no fraud in the transactions, nor any damages sustained by the plaintiff further than paying for more land than he has or can recover, ample justice will be done him by re-imbursing him a tolerable proportion of the purchase money. The Court therefore consider that the plaintiff do recover of the defendant the sum of fifty pounds with costs of suit.

The defendant appears in person and prays that default may be taken off.

The Court do order that the default may be taken off on paying costs.

The defendant pleads that the plaintiffs hath no right to sue for the said note, because he had frequently tendered payment to the said Ferguson that is to say the said Ferguson's own note of hand due twelve months before last June which the said Ferguson refused to accept, and further that he informed the plaintiffs of such tender and refusal, and desired that they would not take the said note as he did not consider himself liable for the payment and that the plaintiffs assured him he would not.

The plaintiff also appear in person and saith that he does not consider the defendant's plea to be in the least sufficient to invalidate his demand against him, and filed the defendant's note bearing date as set forth in his declaration and prays the Court to give judgment.

The Court will take time to deliberate.

Adjourned until Friday next.

Macauly & Mark-
land
vs.
John Carscallan,
(From last
Saturday.)

FRIDAY, 15th JULY, 1791.

Present: The same Judges.

James Clark
vs.
John dec'y Gill.
(From Friday last.)

John Ferguson appears for the plaintiff and filed warrant of attorney.

The defendant being again called this day made default.

The plaintiff filed the defendant's notes bearing date as set forth in said declaration.

The Court having examined the said notes it appears to the Court that one of the said notes bearing date the 19th day of March last, may be for a part of the judgment obtained against the defendant in March term last, therefore the Court will not proceed to judgment until they are better satisfied of this matter by the plaintiff in person.

Titus Simons
vs.
Joseph Allen.
(From 6th inst.)

The defendant appears in person and prays judgment may be entered in this cause.

The Court having considered the verdict of the jury, do order that the defendant be dismissed with costs taxed at fourteen pounds, six shillings, and they do further order that the judgment obtained in this Court on Friday last against the defendant by the said plaintiff for the sum of six pounds, two shillings may be set off as part payment of the costs now adjudged to him.

Macaulay & Mark-
land
vs.
John Carscallan.
(From Monday
last.)

Thomas Markland appears for the plaintiffs and prays that judgment may be entered in this cause.

The Court not being yet prepared to give judgment will take time to deliberate.

Adjourned until Friday the 16th September next. (1791.)

COURT OF
COMMON
PLEAS.

DISTRICT OF MECKLENBURG, KINGSTON, U.C.

FRIDAY, 16th SEPTEMBER.

SEPTEMBER
TERM,
1791.

The Court met pursuant to adjournment.

Present: The Honourables Richard Cartwright and Neil McLean, Esquires.

David Betton, of
Kingston,
plaintiff,
vs.
James Connor, of
said place,
surgeon,
defendant.

The Sheriff returned that he has duly summoned the defendant to appear.

The plaintiff appears in person and filed his declaration.

John Howard appears for the defendant and filed warrant of attorney.

And the said defendant filed his plea in answer to the declaration and saith that he is not guilty.

The plaintiff persists in affirming that the defendant is guilty, in manner and form as set forth in his declaration, and prays that time may be allowed until next term to procure his evidence.

On motion of the plaintiff the Court do order that time may be allowed as prayed.

The plaintiff, by James Dawson, his attorney, appears and saith that he is now ready for trial.

The defendant appears in person and saith that he is also ready for trial.

The Court orders that this cause may be tried to-morrow.

The plaintiff appears in person and prays that the defendant may be ordered to plead at a short day.

The defendant also appears in person and prays time to procure his evidence.

The Court do order that this cause may be tried on Friday next.

The plaintiff appears in person and prays to withdraw his action and that the note payable to Florence Donavon may be returned, and that the note payable to James Clark, or order, may remain in court as it was taken in part payment of judgment obtained against the defendant in March term last.

The Court do order that the note prayed for may be restored and that the plaintiff pay costs.

John Culbertson appears for the plaintiffs and prays that judgment may be given in this cause.

It does not appear that the said John Culbertson has legal power to appear for the plaintiffs, therefore the Court cannot proceed on any motion made by the said John Culbertson.

Peter Clark appears for the plaintiff and filed the award delivered by the arbitrators in writing and pray the Court to give judgment.

The defendant also appears in person and declares that he is ready to satisfy the said award as soon as a bill of costs may be delivered by the plaintiff.

The plaintiff prays time until to-morrow to deliver bill of costs.

The Court order that time may be allowed as prayed.

John Stringer,
vs.
Joshua Booth.
(From last term.)

Donell McDonell,
vs.
William MacKay.
(From last term.)

James Clark,
vs.
Jno. Dec'y Gill.
(From last term.)

Macauley and
Markland
vs.
John Carscallan.
(From last term.)

William Cox
vs.
Joseph Allen.
(From last term.)

John Ferguson
vs.
Mathew Dies.
(From last term.)

The plaintiff was duly called and did not appear.

John Ferguson
vs.
John Carscallan.
(From last term.)

The plaintiff was duly called and did not appear.

Alex'r Chisholm
vs.
William Johnson.
(From last term.)

The plaintiff was duly called and did not appear.

John Mesure
vs.
James Gale.

The Sheriff returned that he has taken in execution as belonging to the said James Gale a lot of land, No. five, in the second Concession of the Township of Kingston, containing one hundred acres, also lot No. five, in the Third Concession, containing two hundred acres, and half a lot No. seventeen in the Third Concession, containing one hundred acres, all in the said Township of Kingston, consisting in the whole of four hundred acres, the whole of which is advertised for sale according to law to be sold at Kingston on the thirtyeth day of December next, the said James Gale not having any goods or chattels in this district whereof he could levy the said debt and costs.

SATURDAY, 17th SEPTEMBER, 1791.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., Neil McLean, and Hector McLean, Esquires.

John Stringer
vs.
Joshua Booth
(From yesterday.)

The plaintiff appears by James Dawson, his attorney, and prays that his evidence may be called to prove his title to the lot of land set forth in his declaration.

The defendant appears in person and objects to the hearing any parole evidence to prove the plaintiff's title to the said lot of land, because by law no verbal agreement, relative to landed property can be proved by parole testimony, wherefore the defendant prays that this action be dismissed with costs.

The Court do consider that the defendant's reason for objecting to parole evidence does not hold in this case. This suit is not to recover possession of land or damages in consequence of non-performance of an agreement, but for damages for unjustly detaining lands alledged to be originally granted to the plaintiff, and the original grant for which, it is averred by the plaintiff, that the defendant unfairly became possessed of and doth detain, which circumstance can only be proved by parole testimony. It is therefore ordered that the plaintiff proceed with his proofs.

The evidence on behalf of the plaintiff having been gone through, the defendant called no witness, but produced a paper signed John Stringer purporting that he, the said John Stringer, had exchanged with Jesse Booth the lot in question, No. 40, for £2 8s. 10d. lot No. 3 in First Township, and saith that the matter was settled by the said Jesse Booth and Stringer before the Deputy Surveyor General, Mr. Collins, that he, the said Jesse Booth, was to have the lot No. 40.

The Court not being yet agreed what judgment ought to be given in this cause will take time to deliberate thereon until Friday next, at which time the parties are directed to attend.

The plaintiff moves the Court that the sum of three pounds, twelve shillings and eightpence, paid the Sheriff for his fees in this suit, may be added to the costs heretofore taxed, as not being included in the bill laid before the Court at that time. But the Clerk and Sheriff having through sickness been obliged to withdraw from the court, time will be taken to inquire into this matter.

Allen
vs.
Simons.

On motion of the plaintiff it is ordered that the Sheriff do amend the return made on the execution this day and defective for want of describing with sufficient accuracy the situation of the property seized, and that the said return so amended be made to this Court on Friday next.

James Clarke
vs.
John De Courcy
Gill.

John Howard represents to the Court that the Sheriff hath under an execution from this Court advertised for sale his farm in Fredericksburg in a very defective manner, by which he is apprehensive that he may be injured on account of its lessening the value in the opinion of persons inclined to become purchasers. That his farm consists of 150 acres, of which from nine to ten acres are meadow, about thirty acres of arable land, and the rest wood. That there is thereon a dwelling-house, 44 by 22 ft., and a log barn 42 by 22 ft., and moves that the Sheriff made be ordered so to describe it in his advertisements. But he not being prepared to satisfy the Court upon his oath of these particulars no order is made thereon.

Peter Clark appears for the plaintiff and filed power of attorney, and prays that this cause may be ordered for next term, the said John Ferguson being in Montreal.

John Ferguson
vs.
John Carscallan.
(From yesterday.)

The defendant does not appear.

On motion of Mr. Clark, the Court do order that this cause may be heard as prayed.

John Ferguson
vs.
Mathew Dies.
(From yesterday.)

Peter Clark appears for the plaintiff and prays that this cause may be ordered for trial on the first return day of January term next.

The defendant does not appear.

The Court on motion of Mr. Clark do order that this cause may be tried as prayed.

As it is considered by the Court to be irregular for the Clerk of this Court to act as attorney in any cause brought before them, it is ordered that in future he shall not be admitted to appear as agent to manage or conduct any suit in this court, or make any motion except where he is himself personally interested.

It is also ordered by the Judges that no process shall issue from this court for costs due to any of its officers until a regular account of said costs shall have been previously delivered to the party.

The Court adjourned until Friday next.

FRIDAY, THE 23rd SEPTEMBER, 1791.

The Court met pursuant to adjournment.

Present: Richard Cartwright and Neil McLean, Esquires.

John Stringer
vs.
Joshua Booth.
(From Saturday last.)

The plaintiff grounds his claim to the lands in question on what is called a certificate of occupation received by him from the Deputy Surveyor General, and which is in the following form:—

“Province of Quebec.”

“The bearer hereof, A. B., being entitled to one hundred acres of land by his Majesty’s Instructions to the Governor of this Province, has drawn lot No. Forty, consisting of one hundred acres in full of the said proportion in the Seigneurie of No. Two, and having taken the oath and made and signed the declaration required by the Instructions, he is hereby authorised to settle and improve the said lot without delay, and being settled thereon he shall receive a deed of concession at the expiration of twelve months from the date thereof.”

Such certificate is signed by the Governor and countersigned by the Surveyor General or Deputy Surveyor General.

This certificate is evidently nothing more than a promise on the part of the Crown that if the person to whom such certificate is granted shall become a resident and settle himself on the lands expressed in the certificate with a view to cultivate them, he shall, in the event of his being so settled, receive at the expiration of twelve months a deed

of concession, or legal title to such lands; as by reference to the King's Instructions for granting the waste lands of the Crown to the loyalists and disbanded troops will more fully appear. And as it appears on evidence that the plaintiff hath not performed the conditions on his part; but after remaining from two to three months at most on the land, and making some very trivial improvements which indeed hardly deserve to be mentioned, abandoned it with an avowed intention never to return, he must be considered as forfeiting any title he could derive from such certificate. It is not necessary to give any opinion respecting the defendant's right to the premises, the plaintiff having clearly no legal title to them. The Court do consider that this suit be dismissed with costs.

The plaintiff appears in person and filed his account against the defendant, amounting to ninety-two pounds, one shilling, lawful currency, including the defendant's note bearing date as set forth in the declaration.

The defendant also appears in person and saith that with respect to the note filed against him, he ought not to be charged therewith, judgment having been already given against him for that note in the Court of Common Pleas, in the District of Montreal, sometime in December, one thousand seven hundred and eighty-seven, but time having been given since last term for the defendant to produce proof of this and no such being now offered, the Court also supposing that no judgment could be given on a note of hand, without the same being filed in the said court, do consider the plaintiff's plea in this respect as immaterial.

And the defendant further saith that with respect to the book account, he is not indebted in manner as set forth in the declaration which he prays may be inquired of by the Court.

And the plaintiff doth so likewise.

The Court do order that the parties may appear on Wednesday next.

The Sheriff returned that he has duly summoned the defendant to appear.

The plaintiff appears in person and filed his declaration.

The defendant being duly called made default.

The plaintiff prays that default may be recorded.

Ordered accordingly.

The Sheriff returned that he has taken in execution as belonging to John de Courcey Gill a lot of land in Camden, First Concession, No. Four, containing two hun-

Donell McDonell
vs.
William McKay.
(From Friday
last.)

Peter Clark, of
Kingston,
plaintiff
vs.
Joseph Allen, of
Adolphustown,
defendant.

James Clark,
vs.
John Dec'y Gill.
(From March
term last.)

dred acres, also No. Six, in the First Concession, containing two hundred acres, and also one half of lot No. Four, in the Second Concession, containing one hundred acres, which he has advertised according to law to be sold and adjudged to the highest bidder on the thirtieth day of December next at Kingston; the said John de Courcy Gill having no goods or chattels in his district whereof he could levy any part of said debt or costs.

Adjourned until Wednesday next.

WEDNESDAY, 28th SEPTEMBER, 1791.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., and Neil McLean, Esquires.

Donell McDonell
vs.
William McKay.
(From Friday
last.)

The plaintiff appears in person and perists in affirming that the defendant is indebted to him in manner as set forth in his declaration, which he is ready to prove.

The defendant also appears in person and objects to the sum of ten pounds overcharged him for Mr. Lansingh's share of mess account between the 15th March and 28th August, 1789. The defendant also filed his account against the plaintiff for the sum of fourteen pounds currency.

The plaintiff saith that with respect to the defendant's account, excepting the sum of two pounds, it being for fees of officer for making up manifests on shipping of officers' stores in the King's vessels, he doth not think himself entitled to pay it. These fees being established by law in the case of clearing merchants' vessels only. And with respect to the ten pounds objected as a wrong charge by the defendant, who alledges that, that sum should have been placed to the account of Philip P. Lansingh, Esq., who jointly ordered and partook of articles charged in the said account to the amount of twenty pounds. And the plaintiff saith that the several items charged in the said account were furnished on the sole credit and by the sole orders of the defendant.

The deposition of Alexander McDonell was taken and filed on motion of the plaintiffs.

The Court having fully heard the parties, likewise the evidence in this cause, will take time to deliberate and give judgment on Friday next.

Robert Clark
vs.
Thomas Loyd and
Elisha Crane.
(From 15th July
last.)

The Sheriff returned that he has seised and taken as belonging to the within named Thomas Loyd and Elisha Crane, of Marysburg, two milch cows, one young bull, and two lots of land known by the name of lots number fifteen

and number sixteen, containing one hundred acres each, which he has advertised according to law. But the plaintiff requesting to stay the execution he has not proceeded to the sale of the said cows and bull, as by the said execution it is directed.

The Court adjourned until Friday next.

FRIDAY, 30th SEPTEMBER, 1791.

The Court met pursuant to adjournment.

Present: The three Judges.

The plaintiff appears in person and prays that the Court will give judgment in this cause.

Donell McDonell
vs.
William McKay.

The defendant does not appear.

It is considered by the Court, that with respect to the sum of ten pounds objected to by the defendant, being the moiety of articles used in common by him and another person to whom he alledges that the plaintiff ought to resort to for that sum; as it appears in evidence that the articles so objected to were furnished by his sole order, and on his sole credit, the Court consider the objections as of no weight. It rests with the defendant and not with the plaintiff to have recourse to this third person.

The set-off by defendant for fees on the entry of the private effects of officers and others shipped in the King's vessels, appears perfectly just. It is indeed truly observed by the plaintiff that the law establishing the fees of a Superintendent of Inland Navigation relate to private vessels only. But his intervention is made necessary for the shipping of private effects in the King's vessels, and it does not appear incident to his office to do this business gratis. Like every other man he is entitled to be paid for his labour. Indeed the regulations settled by the Governor plainly say, if you ship private effects in the King's vessels, you must pay the superintendent twenty shillings for his trouble. It is optional to ship or not. Therefore by shipping a debt of twenty shillings is incurred to the superintendent, who has a legal remedy for this sum against the shipper in the same manner the owner has for the established freight.

On examining the accounts and other papers laid before the Court it appears that the defendant is indebted to the plaintiff the sum of seventy-four pounds, twelve shillings and threepence; it is therefore considered that the plaintiff do recover of the defendant the aforesaid sum of seventy-four pounds, twelve shillings and threepence, together with costs of suit taxed at six pounds, thirteen shillings and sixpence currency.

Peter Clark
vs.
Joseph Allen.
(From Friday
last.)

The plaintiff appears in person and filed the several notes and account as set forth in his declaration.

The defendant being again duly called made default.

The plaintiff prays that judgment may be given against the defendant.

The Court having duly examined the several exhibits filed, likewise considered the default made by the defendant, do consider that the plaintiff shall recover of the defendant the sum of eighteen pounds, seven shillings for his debt and costs taxed at three pounds, eleven shillings and six-pence.

Alexander
Chisholm
vs.
William Johnson.
(From last term.)

The plaintiff appears in person and prays that the Court may proceed to trial in this cause.

The defendant being duly called does not appear.

It appears that there was a rule of Court in this cause the last term, that the parties should appear on the first return day of this term, and as the plaintiff did not appear at that time or at any time since, until to-day, nor has given any notice of trial to the defendant.

The Court, on special instance of the plaintiff, do order that the cause may be tried next term, and that his failing to appear at the first day of this term shall not be considered as a discontinuance.

JANUARY TERM.

MONDAY, 2nd DAY JAN., 1792.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., and Hector McLean, Esquires.

The Court adjourned until to-morrow at eleven o'clock in the forenoon.

TUESDAY, 3rd JANUARY, 1792.

The Court met.

Present: The same Judges.

The Sheriff returned that he has summoned the defendant.

The plaintiff was called and does not appear.

Gabriel Gordon,
Lieutenant of His
Majesty's Second
Battalion of 60th
Regt. of Foot,
plaintiff,
vs.
Michel Grass of
Kingston,
defendant.

Terrence Hunt,
private soldier in
the 2nd Battalion
of 60th Regt. of
Foot at Kingston,
plaintiff,

vs.
Titus Simons of
Kingston,
defendant.

The Sheriff has returned that he summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant was called and made default.

Mr. Lansingh produces and filed a certain writing from the defendant requesting him to make an excuse to the Court for his not appearing which was owing to indisposition.

The Court do consider that the said excuse not being accompanied by an affidavit, it is ordered on motion of the plaintiff that the default be recorded.

The Sheriff has returned that he summoned the defendant.

The plaintiff was duly called and does not appear.

The defendant appears in person and prays that this action be dismissed, with costs.

The Court on motion of the defendant do order that the defendant be dismissed and do recover of the plaintiff twenty-five shillings costs.

The Sheriff returned that he has summoned the defendant.

The plaintiffs were called, and John Culbertson appears and represents to the Court that the said Robert Macaulay being unable to attend from sickness, and the said Thomas Markland having been summoned to attend the Coroner, the said plaintiffs pray that this cause may be tried to-morrow, which is ordered accordingly. These circumstances being within the knowledge of the Court.

The Sheriff has returned that he has summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant was duly called and made default.

It is ordered on motion of the plaintiff that default be recorded.

The plaintiff appears and prays that this cause be ordered for to-morrow.

Ordered accordingly.

Christopher Georgen appears for the plaintiff and filed power of attorney given by the plaintiff to James Clark, Jun., which authorises the said James Clark to authorise and appoint one or more attorneys under him, and the said Christopher Georgen also filed a warrant of attorney from James Clark to appear as counsel in this cause, and the said counsel prays that judgment may be given on motion for a new trial in this cause.

The Court will take time to deliberate further of and concerning the plaintiff's motion for a new trial.

John Huyck, of
Adolphustown,
plaintiff,

vs.

Willet Casey,
defendant.

Robert Macaulay
and Thomas Mark-
land, merchants,
and late
co-partners in
trade under the
firm of Macaulay
and Markland,
plaintiffs,

vs.

Daniel McMullan,
of Fredericksburg,
defendant.

Christopher
Georgen, of
Kingston, taylor,
plaintiff,

vs.

William Jones,
of said place,
defendant.

David Betton

vs.

James Connor.
(From last term.)

John Ferguson

vs.

John Carscallen.
(From last term.)

John Ferguson
vs.
Mathew Dies.
(From last term.)

Christopher Georgen appears for the plaintiff and filed warrant of attorney from James Clark, Jun.

The defendant being called does not appear.

On motion of the plaintiff this cause is ordered for next term.

Alexander
Chisholm
vs.
William Johnson.
(From last term.)

The plaintiff appears in person and prays that the Court may proceed to try the issue joined.

The defendant also appears in person and prays that further time may be allowed him to procure some papers from Quebec necessary to prove his title to the premises.

As it appears to the Court that sufficient time has already been allowed the defendant to procure any such proof and that the defendant has actually received letters from Quebec more than once since this cause was instituted, it is ordered that the plaintiff may proceed to prove his claims as by his declaration is set forth.

The plaintiff produced a certain writing as follows:—

Province of
Quebec,
District of
Mecklenburgh.

Kingston, 15th April, 1789.

The bearer, Mr. Alexander Chisholm, being intituled to Lord Dorchester's Bounty, by his order from the Land Board, has drawn one half of lot No. 11 in the First and Second Concessions, consisting of two hundred acres, in full of the said proportion, in the Township of Thurlow, and having taken this oath and made and signed this declaration required by the King's instructions, he is hereby authorised to settle and improve the said lot without delay, and being settled thereon he shall receive a Deed of Concession at the expiration of twelve months from the date hereof.

Signed, ALEXANDER AITKIN,

Dp'y G. Survey'r for the District of Mecklenburgh.
N.B.—East half of No. 11.

On motion of the plaintiff the deposition of John McIntosh was taken and filed.

The Court having this day fully heard the parties, and the evidence called by the plaintiff, the defendant not having called any evidence, but insisted that the plaintiff had no title to the premises, the Court not being prepared to give judgment will take time to deliberate.

Robert Macaulay
and Thomas
Markland,
merchants and
late co-partners,
under the firm of
Macaulay &
Markland, of
Kingston,
plaintiffs,
vs.
John DeCoursey
Gill, late of
Fredericksburg,
defendant.

The Sheriff has returned that he has duly summoned the defendant to appear.

The plaintiffs were called, and John Culbertson appears for them and informs the Court that the said Robert Macaulay is unable to attend from sickness, and that the said Thomas Markland is summoned to attend the coroner as a juror, on an inquest to be taken this day, and prays that this cause may be ordered for to-morrow.

The defendant being called does not appear.

The circumstances represented by John Culbertson being within the knowledge of the Court, it is ordered that this cause be called to-morrow.

Adjourned until to-morrow at eleven o'clock in the forenoon.

WEDNESDAY, THE 4th DAY OF JANUARY, 1792.

The Court met.

Present: The same Judges.

The plaintiff and defendant were called and did appear.

The Court having upon mature deliberation considered the arguments of the parties, are of opinion that the conversation that passed between the plaintiff and defendant in the spring, one thousand seven hundred and eighty-nine, as stated in the deposition of John McIntosh, can by no means be construed as a surrender of the premises to the plaintiff or such a recognition of his right to them as would be insufficient in law to entitle him to recover the possession, or damages for with-holding it or his representative. Besides, as in his declaration the plaintiff sets forth no other title to the lands than as having drawn them (meaning their being assigned him as a part of the lands promised by Government to persons of his description), no evidence of a title grounded on any other matter would be admissible.

The plaintiff's claim therefore must not rest solely on the authority of the writing signed "Alex'r Aitkin. Dp'y G. Surveyor for the District of Mecklenburg" without entering into the question how far such writing could be at all considered as a legal conveyance. We all know that the Deputy-Surveyor hath of himself no authority to grant the lands of the Crown, and can only do it by virtue of some power derived from His Majesty's Representative the Governor of the Province. How such power is derived to him, and that it hath been in this instance strictly pursued should have been particularly shown by the plaintiff. The Court cannot take for granted either that such power exists, or that it hath been duly executed, unless it hath been circumstantially set forth and proved by the plaintiff. The omission is therefore fatal, and without entering into the merits of defendant's title there must be judgment of non-suit.

The plaintiff appears in person and prays that the issue joined in in this cause may be enquired of by the court.

Alexander
Chisholm,
vs.
William Johnson.
(From yesterday.)

David Betton
vs.
James Connor.
(From yesterday.)

John Howard appears for the defendant and prays that a venire may issue for a jury to try the issue joined.

On motion of the defendant it is ordered that a venire do issue returnable on Saturday next, the seventh instant.

Robert Macaulay &
Thomas Markland
vs.
Daniel McMullan.
(From yesterday.)

Thomas Markland appears for the plaintiffs and filed the declaration.

The defendant also appears in person and saith that he is not indebted to the plaintiffs the sum demanded in the declaration or any part thereof.

And the plaintiff in reply saith that the defendant is indebted in manner as set forth in said declaration, which he prays may be enquired of by the Court.

The defendant sayeth that he is not ready for trial, for want of William McKay, Esq., a material witness who is absent at Niagara, of which he is ready to make affidavit.

It is ordered that the defendant may be allowed time until Saturday, the seventh instant, to file his affidavit.

Robert Macaulay &
Thomas Markland
vs.
John Dec'y Gill.
(From yesterday.)

Thomas Markland appears for the plaintiffs and filed declaration.

The defendant was duly called and made default.

On motion of plaintiffs it is ordered that the default be recorded.

Hamilton and
Cartwright
vs.
Gotlieb Christian,
Baron de
Reitsenstein.

The Sheriff returns and filed a caveat entered by Joseph Allen, against the sale of lots Nos. One, Seventeen, and Twenty-seven, of the lands, taken and seised as belonging to the defendant.

It is ordered that the said Joseph Allen shall appear in this Court on the first return day of next March term to prove his title to the said lands, and that the Sheriff do not proceed to make sale thereof until the further determination of this Court.

Hamilton and
Cartwright
vs.
Richard Campbell.

The Sheriff returned that he has seised and taken in execution as belonging to Richard Campbell, one dwelling-house, 24 feet long, 18 feet wide, and one stable fifteen feet square, both situate, lying, and being in Kingston, and one lot of land in Marysburg, known by the name of lot No. Nine, fronting the lake, containing one hundred acres, and that all the said premises are duly advertised according to law to be sold and adjudged to the highest bidder on Thursday, the 26th day of January next, at ten o'clock in the forenoon of said day at the house of James Robins; the said Richard Campbell having no other goods or chattels whereof he could levy any part of the debt or costs, as was commanded him.

Adjourned until Saturday next, the seventh inst., at ten o'clock in the forenoon.

SATURDAY, THE 7th JANUARY, 1792.

The Court met pursuant to adjournment.

Present: The same Judges.

The Sheriff returned the venire.

The jurors impaneled and sworn were:—

- | | |
|------------------------|----------------------|
| 1. Michel Grass. | 7. Eman'l Elderbeck. |
| 2. James Robins. | 8. David Brass. |
| 3. John Duncan. | 9. Andrew Derrick. |
| 4. Christopher Georgen | 10. James Russell. |
| 5. Malen Knight. | 11. Hickbut Hawley. |
| 6. George Gallaway. | 12. Amos Ainsley. |

David Betton
vs.
James Connor.

The declaration of the plaintiff and the plea of the defendant were read.

Evidence for the plaintiff sworn: Robert Macaulay, Thomas Markland, Donald McDonell.

Evidence for the defendant: Edward Codd.

The Crier of the Court was sworn to attend the jury.

The jury having fully heard the parties likewise their respective evidence, withdrew to consider of their verdict, and having returned into court and being now called over, say by Christopher Georgen, their foreman, that they find a verdict for the defendant.

The Court will take time to consider.

The defendant appears in person and filed affidavit that he could not proceed to trial of this cause without the evidence of Wm. McKay, and prays that this cause may be ordered for trial on the return day of next term.

Robert Macaulay &
Thomas Markland
vs.
Daniel McMullan.

On motion of the defendant, it is ordered that this cause be set down for trial on the first return day of March term next.

Adjourned to Monday, the ninth inst.

MONDAY, THE 9th DAY OF JANUARY, 1792.

The Court met pursuant to adjournment.

Present: The same Judges.

The Sheriff returned that he has summoned the defendant.

The plaintiff was called. James Clark, Jun., appears and filed declaration in this cause, the said James Clark also produces a power of attorney duly executed from Peter Arnoldie to John Ferguson, also a general power of attorney from the said John Ferguson authorising him.

Peter Arnoldie
vs.
Richard Ferguson.

generally to act as his attorney in all matters whatsoever, but as there appears no particular power of substitution respecting Mr. Arnoldie's business, the Court do not think him the said Jas. Clark duly authorised by virtue of the said power of attorney from John Ferguson to appear as his substitute in this cause. It is therefore considered that no further proceedings can be had in this cause.

Solomon Orser &
Mary Orser
vs.
Oliver Arnold.

The Sheriff has returned that he summoned the defendant.

Solomon Orser appears for the plaintiffs and filed declaration.

The defendant appears in person and prays that time may be allowed him to enter his plea.

On motion of the defendant it is ordered that time may be allowed until Thursday next, the twelfth inst.

Alexander Clark
vs.
Owen McGraw.

The Sheriff returned that he has summoned the defendant.

The plaintiff appears in person and filed declaration.

John Armstrong appears for the defendant and filed warrant of attorney from the defendant to confess judgment for the sum demanded in the declaration of the plaintiff.

The plaintiff also filed the defendant's promissory note for the sum of seventeen pounds, sixteen shillings and ninepence, likewise his account amounting to the sum of eighteen shillings and sixpence, and his account of interest. In all amounting to the sum of twenty pounds, thirteen shillings and ninepence.

It is therefore considered by the Court that the plaintiff shall recover of the defendant the said sum of twenty pounds, thirteen shillings and ninepence, with costs of suit.

John Carscallen
vs.
John Ferguson.

The Sheriff has returned that he summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant was called and made default.

On motion of the plaintiff it is ordered that the default shall be recorded.

David Betton
vs.
James Connor.

The plaintiff appears in person and prays that a new trial may be had in this cause because that the verdict of the jury was contrary to the evidence given them.

The defendant appears by his attorney, John Howard.

It is considered on motion of the plaintiff that the defendant may appear in this court on the first return day

of next term to show cause why a new trial should not be had as prayed.

James Clark, Jun., appears for the plaintiff, and prays judgment on motion for a new trial in this cause.

John Ferguson
vs.
John Carscallen.

It is ordered that the defendant may appear in this court on the first return day of next term, and show cause why a new trial shall not be allowed.

TUESDAY, THE 10th DAY OF JANUARY, 1792.

The Court met.

Present: Richard Cartwright and Hector McLean, Esquires.

The defendant now appears in person and prays that the default of Tuesday last may be taken off.

Terrence Hunt
vs.
Titus Simons.

It is ordered on motion of the defendant that default be taken off on paying costs.

And the said defendant saith that he is not guilty in manner and form as set forth in the declaration of the plaintiff, and prays that this may be inquired of by the country.

And the said plaintiff doth so likewise, and prays that a venire may issue.

It is ordered that a venire may issue as prayed, returnable on Friday next the thirteenth instant.

The defendant was again duly called this day and made default.

Robert Macaulay &
Thomas Markland
vs.
John Dec'y Gill.

Thomas Markland appears for the plaintiffs and prays that the Court may proceed to try this cause, and receive proof of their demand as stated in the said declaration. And the said plaintiffs produce the defendant's promissory note for the sum of fifty-two pounds, fifteen shillings currency and an account of interest thereon amounting to one pound, nine shillings, in all amounting to the sum of fifty-four pounds, four shillings, and saith that the same is due for the goods and merchandises as stated in the declaration.

John Culbertson, being a witness to the said promissory note, was sworn to declare the authenticity of the same.

It is considered that the plaintiff shall recover of the defendant the sum of fifty-four pounds, four shillings, for their said debt, together with costs of suit.

Christopher
Georgen
vs.
William Jones.

The defendant was again duly called this day and made default.

The plaintiff appears in person and prays that the Court may proceed to receive proofs of his demand against the defendant, likewise produces and filed several accounts against the defendant for the sum demanded in his declaration, which accounts the said plaintiff and Thomas Markland have attested.

The Court having duly examined the said accounts filed, likewise the original writ of summons and the default made by the defendant, it is considered that the plaintiff do recover of the defendant the sum of fourteen pounds, eleven shillings and one penny halfpenny currency for his debt, together with costs of suit.

Adjourned until Thursday next.

THURSDAY, THE 12th JANUARY, 1792.

The Court met.

Present: The same Judges.

No business.

FRIDAY, THE 13th DAY OF JANUARY, 1792.

The Court met.

Present: The same Judges.

Terrence Hunt
vs.
Titus Simons.

The Sheriff returned the venire.

The parties appear personally.

The jury called and sworn to try the issue joined were:

- | | |
|------------------------|----------------------|
| 1. John Everett. | 7. George Younge. |
| 2. Michel Grass. | 8. James Richardson. |
| 3. John Duncan. | 9. Barnabas Day. |
| 4. James Robins. | 10. Samuel Ainsley. |
| 5. Christopher Georgen | 11. Amos Ainsley. |
| 6. Joseph Pritchard. | 12. Phillip Pember. |

Evidence sworn for plaintiff: John Gurner, Charles Ingram, Frederick Yeates.

Evidence for defendant: Ephraim Knap.

The jury having fully heard the parties, likewise their respective evidence, withdrew to consider of their verdict, and having returned into court, say by James Richardson, their foreman, that they find a verdict for the plaintiff with ten shillings damages, and that the plaintiff and defendant do each pay their own costs.

The Court informed the jury that the matter of costs did not regularly come under their consideration, that the points on which they were to determine was whether the

issue was for the plaintiff or the defendant, and if for the plaintiff to assess the damages that the case seemed to require, that the costs must follow the rules fixed by law in such cases.

Whereupon the jury again retired to consider of their verdict, and having returned into Court say by James Richardson, their foreman, that they find a verdict for the plaintiff with five shillings and sixpence damages.

Adjourned until to-morrow.

SATURDAY, THE 14th JANUARY, 1792.

The Court met.

Present: The same Judges.

The plaintiff appears in person and prays the Court to give judgment on the verdict of the jury in this cause.

It is considered by the Court that the plaintiff shall recover of the said defendant the sum of five shillings and sixpence awarded him for damages, together with costs of suit. There having been an actual battery, not an assault only, in which latter case no more costs than damages could have been awarded.

The Sheriff has returned that he summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant was duly called and made default.

On motion of the plaintiff it is ordered that default be recorded.

Adjourned until Saturday, the 17th March next.

SATURDAY, THE 17th DAY OF MARCH, 1792.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., Neil McLean, and Hector McLean, Esquires.

The Sheriff returned that he has duly summoned the defendant.

Thomas Markland appears for the said plaintiffs and filed declaration.

The defendant was called and made default.

On motion of Mr. Markland, it is ordered that the default be recorded.

Terrence Hunt
vs.
Titus Simons.

Joseph Forsyth
& Co.
vs.
Michel Phillips.

MARCH TERM,
1792.

Robert Macaulay &
Thomas Markland,
of Kingston,
merchants and
late co-partners,
plaintiffs,
vs.
Simon J. Cole, of
Sophiasburgh,
yeoman,
defendant.

George Galloway,
of Kingston,
yeoman,
plaintiff,
vs.
Amos Ainsley,
of said place,
carpenter,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant also appears in person and saith that he is not ready for trial, for that he having paid money on account of his said obligation by the desire of the plaintiff to the plaintiff's wife for which he took a receipt, and the said receipt being lost or mislaid, he prays that time may be allowed him to prove the same.

The plaintiff in reply saith that the money paid by the defendant is endorsed on the said note, and that the defendant is indebted in manner as set forth in the declaration.

It is ordered that this cause be set down for trial on Monday next, the nineteenth inst.

David Betton,
plaintiff,
James Connor,
defendant.
(From last term.)

The plaintiff appears in person.

John Howard appears pursuant to Rule of Court last term, and prays that he may be dismissed as attorney for the defendant, the defendant being personally present.

James Connor appears in person and prays that time may be allowed until Monday next to file reasons against a new trial being had in this cause.

On motion of the defendant it is ordered that time be allowed as prayed.

Robert Macaulay &
Thomas Markland,
plaintiffs,
vs.
Daniel McMullan,
defendant.
(From last term.)

Thomas Markland appears for the plaintiffs.

The defendant being called does not appear.

It is ordered that this cause be set down for trial on the first day of next term.

Peter Schultz
vs.
William Carsons.

The plaintiff appears in person and produced and filed an authenticated copy of a judgment of the Court of Appeals whereby the judgment in this cause given by this Court has been reversed, and prays by a petition filed that a Rule of this Honourable Court may be made for the said William Carsons to appear before them on Saturday, the twenty-fourth instant, to shew cause, if any he hath, why this cause should not stand revived and be forthwith proceeded upon.

It is ordered accordingly that the said William Carsons do appear in this court on Saturday, the twenty-fourth inst., as prayed.

MONDAY, THE 19th DAY OF MARCH, 1792.

The Court met.

Present: The same Judges.

The defendant appears in person and filed his reply to the prayer of the plaintiff for a new trial.

The plaintiff also appears in person and persists that the verdict of the jury was contrary to evidence, therefore prays a new trial may be had.

The Court will take time to deliberate and give judgment on motion for a new trial.

The plaintiff appears in person.

The defendant was called and does not appear.

The plaintiff produced and filed the defendant's promissory note bearing date, etc., as set forth in his declaration, by which it appears that there still remains due on the said note the sum of twenty pounds, fourteen shillings and eightpence currency of this Province, and the further sum of seventeen shillings and elevenpence for interest due thereon. The said note being witnessed by Peter Clark, he was sworn to the authenticity thereof.

It is therefore considered by the Court that the plaintiff shall recover of the defendant the sum of twenty-one pounds, twelve shillings and sevenpence for principal and interest, with costs of suit.

In action of damages for slander, from last term.

The defendant appears in person and prays the Court to give judgment on the verdict of the jury in this cause.

The plaintiff was duly called and does not appear.

It appears to the Court that the plaintiff has from time to time put off the proceeding to judgment on motion made in March term 1791, and the defendant represents to the Court that the plaintiff does not appear to proceed according to the motion made by him the last term. The defendant therefore prays to be dismissed.

It is considered that the Rule of Court for the defendant to appear and show cause why a new trial should not be had be discharged, and that the defendant be dismissed from this suit with costs, taxed at four pounds.

Adjourned until Friday, the 23rd inst.

FRIDAY, 23rd MARCH, 1792.

The Court met pursuant to adjournment.

Present: The three Judges.

The Sheriff returned that he has summoned the defendant by leaving a true copy of the original writ of summons and declaration at the defendant's last place of residence in the hands of a grown person.

The plaintiff appears in person and filed declaration.

The defendant being duly called made default.

David Betton
vs.
James Connor.
(From Saturday last.)

George Gallaway
vs.
Amos Ainsley.
(From Saturday last.)

John Ferguson
vs.
John Carscallen.

Richard
Cartwright, Jun.,
of Kingston,
merchant,
plaintiff,
vs.
Moses Simmons,
of Ernest Town,
yeoman,
defendant.

It is ordered on motion of the plaintiff that the default be recorded.

David Betton
vs.
James Connor.

The plaintiff appears in person and prays the Court to give judgment on motion for a new trial in this cause.

The Judges differing in opinion of and concerning judgment on motion for a new trial in this cause gave their reasons, one by one, as follows, viz.: The Honourable Hector McLean, Esq., saith that the defendant has not shewn sufficient cause why a new trial ought not to be granted. That the verdict is contrary to evidence, and that there was not only an actual battery clearly proved, but likewise marks of violence in consequence thereof, in which case considerable damages are frequently given, though in the present instance moderate damages could have only been expected; there appears to be no positive rule or precedent of law to govern the Court or bind them relative to granting new trials, but seem to be left entirely at their discretion. Not granting a new trial in this case would be making a dangerous precedent and establishing the verdict of a jury, tending to impress an opinion on the minds of the people, that, however great the injury offered to one's person, it should entitle him to no damages without he sustains pecuniary loss, an opinion tending to endanger the peace and tranquility of His Majesty's subjects, by encouraging rather than suppressing disorderly behaviour, and consequently highly repugnant to the original intention of juries and the liberty of the English Constitution, wherefore he saith that he is clearly of opinion that a new trial ought to be granted.

The Honourable Neil McLean, Esq., saith that after duly considering the defendant's plea against a new trial, and the plaintiff's reason for demanding it, he is much inclined for a new trial, for that the plaintiff founds his demand on not having justice done him that the verdict of the jury was contrary to evidence, which evidence fully proved the assault and battery charged against the defendant. In such cases nothing but the matter being of so trifling a nature as not to merit a reconsideration can justify a non-compliance with the plaintiff's prayer. That this ought not to be classed with insignificant cases, I am fully of opinion, as the meanest subject in this Province, without any provocation, to be stopped in the street, insulted and struck, is entitled far greater damages than is mentioned in any of the cases that has yet come to my knowledge, when a new trial was refused, and as the law allows the rank and station of the injured party to be taken into consideration (Blackstone's Reports, page 1327, Leath and Pope) the damages in this case ought not

to be of a trifling nature. An observation of Judge Blackstone in the Commentaries, Vol. 3, page 391, merits our notice on this occasion:—"Next to doing, the great object in the administration of publick justice should be to give public satisfaction. If the verdict be liable to many objections and doubts in the opinion of his counsel, or even in the opinion of by-standers, no party would go away satisfied unless he had a prospect of reviewing it, such doubts would with him be decisive: he would arraign the determination as manifestly unjust: and abhor a tribunal which he imagined had done him an injury without a possibility of redress." I have no doubt but in this case the above would exactly accord with the sentiments of the plaintiff, and many of the by-standers, were a new trial denied, and I see nothing against the legality and justice of granting it. I am for a new trial.

The Honourable Richard Cartwright, Jun., Esq., saith as follows:—That new trials are little known in this country, where till within a few years all civil actions have been determined by the judges only, and where this mode of trial is still within the option of the parties. They are, however, a necessary consequence of the introduction of trial by jury, where with the most upright intentions the jurors may sometimes be mistaken. If an erroneous judgment be given in a point of law, or a court judges of fact, upon depositions in writing, their decision may be revised in a Court of Appeals. But a general verdict can only be set right by a new trial, which is no more than having the cause more deliberately considered by another jury, where there is a reasonable doubt or perhaps a certainty that justice had not been done, and the object in dispute is of such a nature and magnitude as to warrant it. For it is not on every occasion that the Court will be justifiable in interfering to controul the powers which the Constitution hath very wisely lodged in the jury. In applying these observations to the case before us, it seems to be a point settled that in the actions of the present class, founded on torts or personal wrongs, a new trial shall not be granted on account of the damages being trifling or excessive, as in such cases they depend on circumstances which are properly and solely under the cognizance of the jury, and fit to be submitted to their decision and estimate. Buller's Law of Nisi Prius, page 327, Burrows Reports, page 609, Wittford *vs.* Berkley; and there is a decision of Westminster Hall directly in point with the present case, where it was determined by the Court of King's Bench that a new trial is not necessarily granted in such cases, even where the

verdict is contrary to evidence, as it may notwithstanding be agreeable to the real equity of the case. See the case of *Burton vs. Thompson*, Burrows Reports, page 664; a further reason there given by Lord Mansfield is that "the cause of action is in the nature of a crime; the implied damages are in some measure by way of punishment; and in criminal cases where the defendant is acquitted a new trial cannot be granted." This of itself is sufficiently decisive, but the other reasonings in that case may also with propriety be applied to this. Though I certainly expected and even directed a verdict for the plaintiff, I did not think that the circumstances which appeared at the trial would have warranted any considerable damages, and therefore though the jury, which was a very intelligent and respectable one, have certainly gone too far, and have contrary to evidence found for the defendant; yet as this verdict cannot be set aside without payment of costs, the granting a new trial would only be giving the plaintiff opportunity of harassing the defendant without any material benefit to himself, and it would be unbecoming a court of justice to assist the passions of mankind. I am therefore clearly of opinion that the rule ought to be discharged.

Two of the judges having agreed in opinion that a new trial should be granted in this cause, it is ordered that a new trial be allowed on payment of costs.

Adjourned until Saturday next, the twenty-fourth day of March inst.

SATURDAY, THE 24th DAY OF MARCH, 1792.

The Court met.

Present: The three Judges.

John Carscallen,
of Fredericksburg,
yeoman,
plaintiff,

vs.

John Ferguson,
of Kingston,
gentleman,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant was duly called and made default.

On motion of the plaintiff it is ordered that the default be recorded.

Robert Macaulay &
Thomas Markland
vs.
Simon J. Cole.

Thomas Markland appears for the plaintiff.

The defendant being again called this day made default.

The plaintiff produces and filed a promissory note signed with the defendant's name bearing date the 8th July, 1790, for the sum of thirty pounds, nineteen shillings and sixpence halfpenny currency.

On motion of the plaintiff it is ordered that this cause may be set down for further hearing on Monday next.

William Carsons appears pursuant to Rule of Court, of the 17th March inst., and saith, that he hath, conformable to the judgment of the Court of Appeals, delivered to the plaintiff the whole of the property which was in his possession belonging to him.

Peter Schultz
vs.
William Carsons.

And the said plaintiff appears in person and acknowledges to have received from the defendant some part of his property, but that there still remains in his possession sundry articles as per account exhibited and filed, which he is ready to prove. And, further, that the several articles already received from the plaintiff are much damaged, which he is also ready to prove, therefore prays that he may be allowed damages for the same.

The parties being mutually agreed that the Court may proceed to examine their respective evidence, it is ordered accordingly.

The depositions of Edward Hicks, William Bermicar, William Schookenae, and Michel Criderman were taken and filed.

The plaintiff also produced and filed account against the defendant.

The defendant likewise filed an account against the plaintiff.

The Court having fully heard the parties, likewise their respective evidence, will take time to deliberate and give judgment on Wednesday next.

Adjourned until Monday next.

MONDAY, 26th MARCH, 1792.

The Court met.

Present: The Honourables Richard Cartwright, Jun., and Neil McLean, Esquires.

Thomas Markland appears for the plaintiffs and prays that John Detler, of Kingston, may be sworn to declare to his knowledge of the handwriting of the defendant.

The said John Detler was sworn and declares that he knows this signature to the note filed and now exhibited to be the handwriting of the defendant.

The Court do therefore consider that the plaintiffs shall recover of the defendant the sum of thirty pounds, nineteen shillings and sixpence halfpenny for the said note, and the further sum of three pounds, three shillings and eleven pence for interest due thereon, with costs of suit taxed at

Robert McAulay &
Thomas Markland
vs.
Simon J. Cole.

David Betton
vs.
James Connor.

The plaintiff appears in person and filed a copy of notice delivered the defendant, and having satisfied the Court that the whole of the costs hitherto accrued on this suit are paid, prays that a venire may issue returnable on Friday next.

On motion of the plaintiff it is ordered that a venire may be issued returnable on Friday next.

Adjourned until Wednesday next.

WEDNESDAY, THE 28th DAY OF MARCH, 1792.

The Court met.

Present: The three Judges.

Peter Schultz
vs.
William Carsons.

The plaintiff appears in person and prays the Court to give judgment in this cause.

The defendant also appears in person.

The Court having fully heard the parties, likewise the evidence produced, do order and adjudge that the plaintiff shall recover of the defendant the sum of forty pounds, currency of the Province, as a compensation for the deficiency of sundry articles not delivered to him by the defendant, together with costs of suit.

And as the Court of Appeal have ordered that the judgment of this Court shall be reversed without costs to either party, the Court cannot take notice of any charge made by the plaintiff on that account.

FRIDAY, THE 30th DAY OF MARCH, 1792.

The Court met pursuant to adjournment.

Present: The three Judges.

Richard Cartwright, Jun.,
plaintiff,
vs.
Moses Simmon.

The plaintiff appears in person and prays that the defendant may be again called.

The defendant was duly called and made default.

The plaintiff produced and filed his account against the defendant, amounting to the sum of eighteen pounds, three shillings and one penny currency, and prays that Thomas Beasley may be sworn to give evidence.

Thomas Beasley, upon oath, declares that the sundry articles charged the defendant in said account was delivered by him to the defendant, and that no part of the said account has been paid for.

The Court do consider that the plaintiff shall recover of the defendant the sum of eighteen pounds, three shillings and one penny for his debt, together with costs taxed at

The plaintiff appears in person and prays that the Sheriff may return the venire.

The Sheriff returned the venire.

The defendant also appears in person.

David Betton
vs.
James Connor.

The jurors called and sworn were:—

- | | |
|-------------------------|--------------------|
| 1. Samuel Merrell. | 7. John Eagar. |
| 2. Justis Miller. | 8. John Wartman. |
| 3. Archibald Fairfield. | 9. Martin Snook. |
| 4. Thomas Burnett. | 10. William Yerks. |
| 5. Michel Dedrick. | 11. John Horning. |
| 6. David Whitman. | 12. Arthur Durser. |

The declaration and plea filed in this cause was openly read to the jury.

Evidence for plaintiff called and sworn: Donald McDonell, Robert Macaulay, Thomas Markland.

Evidence for defendant sworn: Edward Codd, James Richardson, James Forsyth.

The jury having heard the parties, likewise their respective evidence, withdrew to consider of their verdict, and having returned into Court, by their foreman, Thomas Burnett, say that they find for the defendant.

Adjourned until to-morrow.

SATURDAY, THE 31st MARCH, 1792.

The Court met.

Present: The three Judges.

The plaintiff appears in person and prays that the defendant may be again called.

John Carscallen
vs.
John Ferguson.

The defendant appears in person and prays that the default of Saturday last may be taken off, and further prays that this cause may be submitted to arbitration as he has many proofs to produce which will tend to invalidate the said note.

And the plaintiff prays the Court that they will proceed to try this cause because that the defendant hath had sufficient time to prepare for trial, and that a process was served in this cause six months ago, and that the defendant hath not taken any steps towards settling with the plaintiff.

It is the opinion of the Court that the defendant hath not shewn any sufficient cause why they should not proceed to the hearing of this cause, and that the matter in dispute is a common note of hand in the possession of a third person endorsed for valuable consideration, that no

matters of account between the drawer and the original holder could be admitted to impeach validity of the note or be of account against it, it being admitted by the defendant that the said note is his own hand writing. That it is notorious that the defendant was on the spot on the day of the return of the writ, and his now coming into court to pray time, for the production of papers and witnesses, appears evidently calculated for the purposes of delay.

The Court therefore having fully heard the parties and duly examined the said note it is considered that the plaintiff shall recover of defendant the sum of fifty-two pounds, fourteen shillings and eightpence for his said note, and the further sum of six pounds, twelve shillings and ninepence for interest due thereon, together with costs of court.

John Mosure
vs.
James Gale.

The Sheriff returns that he has levied the sum of twenty pounds, nineteen shillings and threepence for debt and costs of suit, together with his own fees, as it was commanded him.

James Clark
vs.
John Dec'y Gill.

The Sheriff returns that he has levied the debt and costs with his own fees as it was commanded him.

David Betton
vs.
James Connor.

The defendant appears in person and prays that he may be dismissed from this action with costs.

The plaintiff also appears in person and saith that he hath no objection to judgment being entered on the verdict of the jury.

It is considered by the Court that the defendant be dismissed with costs taxed at

MONDAY, 17th SEPTEMBER, 1792.

The Court met pursuant to adjournment.

Present: The Honourables Neil McLean and Hector McLean, Esquires.

Robert Macaulay &
Thomas Markland,
of Kingston,
merchants, and
late co-partners,
plaintiffs,

vs.
Alexander
McKenzie,
late of
Pittsburgh,
defendant.

The Sheriff returned that he has duly summoned the defendant by fixing a true copy of the declaration and summons at the defendant's last place of residence.

Thomas Markland appears for the plaintiffs.

The defendant being duly called made default.

On motion of Mr. Markland it is ordered that the default be recorded.

Adjourned till Monday the twenty-fourth inst., at ten o'clock.

MONDAY, THE 24th SEPTEMBER, 1792.

The Court met pursuant to adjournment.

Present: Neil McLean and Hector McLean, Esquires.

The defendant being again duly called this day made default.

The plaintiffs appear by Thomas Markland and produced and filed their account against the defendant, amounting to the sum of twenty-three pounds and tenpence three farthings currency, and having duly attested the same prays the Court to give judgment.

The Court having duly examined the several exhibits filed in this cause, and likewise considered the default of the defendant, it is ordered and adjudged that the said plaintiffs shall recover of the said defendant the aforesaid sum of twenty-three pounds and tenpence three farthings, with costs taxed at four pounds, ten shillings and fourpence.

Adjourned till Saturday next.

Macaulay and
Markland
vs.
Alexander
McKenzie.
(From Monday
last.)

SATURDAY, 29th SEPTEMBER, 1792.

The Court met pursuant to adjournment.

Present: Neil McLean and Hector McLean, Esquires.

No business before the Court

Adjourned until Tuesday, the first day of January next.

DISTRICT OF MECKLENBURG, KINGSTON, 1793.

C.P., 2nd JANUARY, 1793.*

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant also appears in person and prays time until to-morrow to file his plea.

It is ordered that the defendant be allowed time to file his plea as prayed.

Ebenazar
Washburn, of the
County of Lennox,
in the Midland
District, yeoman,
plaintiff,
vs.
Alexander Clark,
of the same place
in the aforesaid
district, yeoman,
defendant.

*The record for the 1st of January and part of that for the 2nd of January, 1793, is missing, evidently torn out of the book.

Ebenezar
Washburn, of the
County of Lennox,
in the Midland
District, yeoman,
plaintiff,
vs.
Oliver Church,
Alexander Clark,
and John
Carscallen,
of the same place,
in the aforesaid
District,
defendants.

The Sheriff returned that he has duly summoned the said defendants.

The plaintiff appears in person and filed declaration.

Alexander Clark and John Carscallen also appear and saith that they are in nothing guilty of the matter laid to their charge in the said declaration.

Oliver Church being duly called made default.

The plaintiff in reply saith that the defendants are guilty in manner as set forth in his declaration and prays that this may be inquired of by the country.

And the said Alexander and John doth so likewise.

It is ordered by the Court that the trial of this cause may be had on Tuesday, the ninth day of April next.

Richard
Cartwright, Jun.,
of Kingston,
merchant,
plaintiff,
vs.
Duncan Bell,
of Fredericksburg,
yeoman,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appeared in person and filed declaration.

The defendant being duly called made default.

The plaintiff prays that the default be recorded.

Ordered accordingly.

Adjourned until to-morrow at twelve o'clock.

THURSDAY, 3rd JANUARY, 1793.

The Court met pursuant to adjournment.

Present: The three Judges.

The plaintiff appears in person.

The defendant also appears in person and prays that further time may be allowed him to file his plea.

By consent of the parties, it is ordered that the defendant shall have time until the eighth day of January instant.

Adjourned till Tuesday next at ten o'clock in the forenoon.

TUESDAY, 8th JANUARY, 1793.

The Court met.

Present: The three Judges.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

Alexander Clark appears for the defendant and filed warrant of attorney, and prays time to file an affidavit of the defendant's being unable to attend from sickness.

It is ordered that time be allowed as prayed.

Robert Macaulay,
of Kingston,
merchant,
plaintiff,
vs.
Oliver Church,
of Fredericksburg,
Esquire,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The said defendant failed to appear.

Thomas Markland appears for the plaintiffs and filed declaration.

Alexander Clark appears for the defendant and prays time until to-morrow to file affidavit of the defendant being unable to attend from sickness.

It is ordered that time be allowed as prayed.

The Sheriff returned that he has summoned the defendant.

Thomas Markland appears for the plaintiffs and filed declaration.

The defendant also appears in person and acknowledges himself indebted to the plaintiffs the sum of fifty-three pounds, fifteen shillings and sevenpence halfpenny.

It is therefore considered that the plaintiffs shall recover of the said defendant the sum of fifty-three pounds, fifteen shillings and sevenpence halfpenny currency of this Province, with costs.

The Sheriff returned that he has duly summoned the defendant to appear.

John Cumming appears for the plaintiffs and filed declaration.

Alexander Clark appears for the said defendant and prays time until to-morrow to file affidavit that the defendant is unable to attend from sickness.

It is ordered that time be allowed as prayed.

The Sheriff returned that he has duly summoned the said defendant.

The plaintiff appears in person and filed his declaration.

The defendant also appears in person and saith that he is in nothing guilty of the premises laid to his charge in the said declaration, of this he puts himself on the country.

And the said plaintiff doth so likewise.

It is ordered that this cause may be tried on Tuesday, the ninth day of April next.

The Sheriff returned that he has duly summoned the said defendant.

The plaintiff appears in person and filed his declaration.

Alexander Simpson appears for the defendant and saith that the defendant hath not been in this Province since the writ of summons has been issued against him, and prays

Robert McAulay &
Thomas Markland,
plaintiffs,

vs.

Oliver Church,
of Fredericksburg,
defendant.

Macaulay and
Markland

vs.

Guysbard Sharp.

John Cumming
and Peter Smith,
of Kingston,
in the District,

vs.

Oliver Church,
of Fredericksburg,
Esquire,
defendant.

Samuel Rose,
of Marysburg,
yeoman,
plaintiff,

vs.

John Vogely,
of said place,
yeoman,
defendant.

George Gallaway,
of Kingston,
yeoman,
plaintiff,

vs.

Amos Ainsley,
of said place,
carpenter,
defendant.

that this cause may be ordered for next term, this circumstance being within the knowledge of the Court, it is ordered that this cause may be tried next March term, on the first return day.

Ebenazar
Washburn,
vs.
Alex'r Clark.

The defendant appears in person and filed his plea.

Ebenazar
Washburn,
vs.
Oliver Church,
Alex'r Clark, and
John Cascallen.

Alexander Clark appears for the said Oliver Church and prays that the default may be taken off.

It is ordered that the default be taken off on paying costs.

The said Alexander saith that the said Oliver is not guilty of the premises laid to his charge in the declaration of the plaintiff, and of this he puts himself on the country.

Richard
Cartwright
vs.
Duncan Bell.
(From 2nd
January.)

The plaintiff appears in person and prays that the defendant may be again called to appear this day.

The defendant was again called and made default.

On motion of the plaintiff it is ordered that this cause may set down for trial on the first return day of March term next.

WEDNESDAY, THE 9th JANUARY, 1793.

The Court met.

Present: The three Judges.

Ebenazar
Washburn
vs.
Alexander Clark.

The plaintiff appears in person and in reply to the plea of the defendant saith that the said defendant hath spoke the words set forth in his declaration of his own wrong and hath no cause as set forth in the said plea, and of this he puts himself on the country.

It is ordered by the Court that this cause may be tried on Tuesday, the ninth day of April next.

Robert Macaulay
vs.
Oliver Church.

Alexander Clark appears for the defendant and filed affidavit that the said defendant was not capable of appearing to answer on account of sickness.

It is ordered that this cause may be tried on Tuesday, the ninth day of April next.

Macaulay and
Markland
vs.
Oliver Church.

Alexander Clark appears for the defendant and filed affidavit that the defendant was not capable of appearing to answer on account of sickness.

It is ordered that this cause may be set down for March term next.

John Cumming &
Peter Smith
vs.
Oliver Church.

Alexander Clark appears for the defendant and filed affidavit that the defendant could not appear for sickness.

Ordered for the first return day of next term.

Adjourned until Tuesday, the fifteenth instant, at ten o'clock.

TUESDAY, THE 15th JANUARY, 1793.

The Court met.

Present: The Honourables Richard Cartwright, Jun., and Hector McLean, Esquires.

The Sheriff returned that he had duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

Ebenezar
Washburn,
plaintiff,
vs.
Hazleton Spencer,
defendant.

And the said Hazleton Spencer cometh and defendeth the form and injury as to the words said to be spoken by him respecting the said E. Washburn, viz., he having been found guilty of perjury on some precedent occasion, he is not guilty of having uttered them. And for this he puts himself upon the country.

And the said plaintiff doth so likewise.

But with respect to the words, he meaning the said Ebenezar was a man whose evidence and affidavit was not entitled to any degree of faith, the said Hazleton doth acknowledge that he did utter the same as he well might, for that on the 20th August last the said Ebenezar said to the said Hazleton after the election was over, I give you joy of your getting the election and you have got it fairly, and afterwards that he, the said Ebenezar, viz., on the 2nd day of September last did make oath before Archibald McDonell, Esquire, of Marysburg, one of His Majesty's Justices of the Peace, that he, the said Hazleton, did obtain the said election through the partiality of the Returning Officer. And, further, the said Hazleton sayeth that the said Ebenezar having been charged in open court with having been guilty of perjury he thought himself justified in saying his deposition was not entitled to credit till he had removed the aspersion publickly cast on his character. And, further, that he was justified in speaking the above words, for that on the 20th day of June, in the year of Our Lord 1786, at Ernest-Town aforesaid, voluntarily made oath before James Parrot, Esq., one of His Majesty's Justices of the Peace for the District of Mecklenburg, now called Midland District, that Hazleton Spencer with others were taking away his property by force. Whereupon the aforesaid James Parrot, Esq., issued a warrant against the said Hazleton by which said warrant the said Hazleton was apprehended and kept in custody, upon examination it appeared the said Ebenezar's deposition was false, and in consequence the said Hazleton was discharged.

And, further, the said Hazleton saith that he did not speak the words aforementioned respecting Mr. Washburn with a view to asperse the character of the said Ebenezar

but merely to vindicate himself from a charge of being unduly elected as a representative for proffered to the House of Representatives for this Province by Mr. A. Thomson, of Fredericksburg, supported by the affidavit of the said Ebenezar, as he is ready to verify.

The plaintiff replies that the defendant is guilty in manner and form as set forth in his declaration and without the causes by him assigned.

THE COURT OF COMMON PLEAS.

MONDAY, THE 18th MARCH.

Present: The Honourables Richard Cartwright, Jun., Esq., and Neil McLean, Esq.

The Court met pursuant to adjournment from the last term.

George Galloway,
of Kingston,
yeoman,
plaintiff,

vs.

Amos Ainslie,
of the said place,
carpenter,
defendant.

The defendant appears and denies the debt in manner and form as set forth in the declaration.

The plaintiff in reply saith that the defendant is guilty in manner as set forth in his declaration, and of this puts himself on his country.

This cause is ordered for trial on the ninth day of April.

The Court is adjourned till Monday next, 25th March.

MONDAY, THE 25th MARCH.

The Court met.

Present: The same Judges.

The plaintiffs appear in person.

The defendant being called made default.

Macaulay and
Markland,
merchants,
Kingston,
plaintiff,

vs.

Oliver Church,
of Fredericksburg,
Esquire,
defendant.

The plaintiff appears in person.

The defendant being called made default.

Robert McCawley,
merchant,
Kingston,

vs.

Oliver Church,
Fredericksburg,
Esq.
defendant.

John Cumming appeared in person.

The defendant being duly called made default.

John Cumming and
Peter Smith,
merchants,
Kingston,
plaintiffs,

vs.

Oliver Church,
of Fredericksburg,
Esq.,
defendant.

The Court adjourned until Saturday, the 30th March.

SATURDAY, 30th MARCH.

The Court met.

The same Judges.

The Sheriff returned that he had caused to be made the sum of ten pounds currency of the defendant's lands, having no more lands on which he could levy in his district.

Rich'd Cartwright,
Jun.,
vs.
Moses Simmons.

The Sheriff returned that he had caused to be made the sum of twenty-two pounds currency of the defendant's lands, having no more lands on which he could levy in his district.

Robert McCauley &
Thomas Markland
vs.
Alex'r McKenzie.

On motion of the plaintiff prays that the trial may be put off on account of material witnesses that reside in other districts that he cannot produce at the next Sessions in April.

The motion being opposed on the part of the defendant.

The Court differing in opinion, the cause stands for trial as ordered.

Ebenezar
Washburn,
of the County of
Lennox, in the
Midland District,
yeoman,
plaintiff,
vs.
Hazleton Spencer,
gentleman,
of the aforesaid
County,
defendant.

Alexander Clarke appears for John Carscallon and Oliver Church and having filed his power of attorney prays leave of the Court to withdraw their former plea of not guilty and file their plea of justification.

The plaintiff on motion to the Court prays time till the next term to put in his answer, which will be on the first day of the June term.

Ebenezar
Washburn,
of the County of
Lennox, in the
Midland District,
yeoman,
plaintiff,
vs.
Oliver Church,
Alex'r Clarke, and
John Carscallon,
of the aforesaid
County,
defendants.

On motion to the Court from the plaintiff begs leave to withdraw his action.

Ebenezar
Washburn,
vs.
Hazleton Spencer.

COURT OF COMMON PLEAS.

APRIL 9th, 1793.

Present: The Honourables Richard Cartwright, Jun., Neil McLean, and Hector McLean, Esquires.

The plaintiff appeared in person and prays that the Court will proceed to hear the trial of this cause.

The defendant being duly called made default from the January term.

Solomon Orser,
yeoman,
of the Township
of Kingston,
plaintiff,
vs.
George Harper,
of the aforesaid
Township,
yeoman,
defendant.
(From January
term.)

Samuel Rose,
of Marysburg,
in the District
aforesaid,
yeoman,
plaintiff,

vs.

John Vogely,
of the same place,
in the District
aforesaid,
yeoman,
defendant.

The plaintiff appeared in person and prays the Court to proceed to trial.

Mary Vogely appears for the defendant and files her power of attorney.

The jury called were sworn:—

- | | |
|---------------------|--------------------------|
| 1. Sampson Stuken. | 7. William Foster. |
| 2. Peter Bowers. | 8. Samuel Reed. |
| 3. Orry Rose. | 9. Joseph Clapp. |
| 4. Timothy Porter. | 10. John Burns, Foreman. |
| 5. Abraham Cronk. | 11. John Frederick. |
| 6. William Harrison | 12. John Lott. |

Evidences for the plaintiff sworn: William Fairman and John Green.

A constable was sworn to attend the jury.

The jury returned into court and find for the plaintiff one pound, ten shillings and threepence.

WEDNESDAY, 10th APRIL.

The Court met.

Present: The same Judges.

The special jury were called and sworn:—

- | | |
|------------------------------|-----------------------|
| 1. Robert McCawley, Foreman. | 7. Peter Smith. |
| 2. James Russell. | 8. Archibald Thomson. |
| 3. James Robins. | 9. Donell McDonell. |
| 4. Emanuel Ellerbeck. | 10. Michael Grass. |
| 5. David Brass. | 11. Thomas Markland. |
| 6. William Moon. | 12. Paul Huff. |

Evidences sworn for the plaintiff: Daniel Johnson and Sheldon Hawley.

Evidences sworn for the defendant: James Parrot, Peter Vanalstine, Hazleton Spencer, John Howard, Andrew Rickley, Guysbard Sharp, and Daniel Wright.

A constable was sworn to attend the jury.

The jury returned into court and find for the defendant.

IN THE COMMON PLEAS.

THURSDAY, 11th APRIL.

The Court met.

Present: The same Judges.

The jury were called and sworn:—

- | | |
|------------------------------|-----------------------|
| 1. Tobias Wrarkman, Foreman. | |
| 2. Walter Ross. | 8. Samuel Reed. |
| 3. John Spencer. | 9. Wm. Cadman. |
| 4. John George. | 10. Conrad Vandeuser. |
| 5. John Green. | 11. Joseph Wright. |
| 6. David Palmer. | 12. Isaac Parliament. |
| 7. Edward Hicks. | |

Evidence for plaintiff: Thomas Scheley and Thomas Humfrys.

Evidence for defendant: William McKindlay, Francis Wycot, and James Robins.

The jury being returned into Court say by their foreman, Tobias Wrarkman, for the defendant.

Conrad Vandeuser,
of Midland
District,
plaintiff,
vs.
Richard Ferguson,
of the aforesaid
District.

The defendant prays that he may be allowed judgment of costs for his attendance ordered till next term.

COURT OF COMMON PLEAS, JUNE TERM, 1793.

MONDAY, THE 17th DAY OF JUNE.

The Court met pursuant to adjournment.

Present: The Honourables Neil McLean and Hector McLean, Esquires.

The Sheriff returned that he had duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant also appears in person and says that he is not indebted in manner or form as set forth in his declaration.

The plaintiff and defendant submit this cause to an arbitration, entering mutually into bonds for the performance of the award, which award to be returned into court.

Thomas Richardson, arbitrator for the defendant.

Mathew Brown, arbitrator for plaintiff.

Joseph Allen,
of Marysburg,
in the aforesaid
District,
plaintiff,
vs.
Edward Hicks,
in the said
District,
defendant.

Joseph Allen,
of Marysburg,
in the District
aforesaid,
plaintiff,

vs.

Augustus Spencer,
of the Little Lake,
yeoman,
in the aforesaid
District,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant being duly called made default.

Joseph Allen,
of Marysburg,
in the District
aforesaid,
plaintiff,

vs.

James Gerolamy,
of Township and
District aforesaid,
yeoman,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant appears in person and acknowledges his note-of-hand, but sets off an account against it and puts himself on the country, and the plaintiff doth so likewise.

This cause ordered for trial on the tenth day of July.

Joseph Allen,
of Marysburg,
in the aforesaid
District,
plaintiff,

vs.

John German, Sen.,
of Sidney, in the
District aforesaid,
yeoman,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant appears in person and confesses he was indebted to the plaintiff for a note-of-hand, but says he conceived the money had been paid, after giving his order for the amount having never received any information from the plaintiff that it had not been accepted.

The cause to be called over to-morrow.

Thomas Markland,
merchant,
of Kingston,
plaintiff,

vs.

Stephen Hare,
of Sophiasburgh,
yeoman, in the
District aforesaid,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant being duly called made default.

Thomas Markland,
merchant,
of Kingston, in the
District aforesaid,
plaintiff,

vs.

Duncan Bell, of
Fredericksburgh,
and Norris Briscoe,
of Ernest Town,
in the aforesaid
Districts,
yeoman,
defendants.

The Sheriff returned that he has duly summoned the defendants.

The plaintiff appears in person and filed his declaration.

The defendants being duly called made default.

Robert McCawley
& Thomas Mark-
land, co-partners
in trade, and
merchants,
of Kingston, in the
District aforesaid,
plaintiffs,

vs.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant appears in person and says he is not indebted in manner and form as set forth in their declaration and puts himself on the country. The plaintiffs doth so likewise and says he is ready to verify this cause to be tried on the tenth day of July.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant appears in person and says he is not indebted in manner and form as set forth in his declaration and puts himself on the country.

The plaintiff is ready to verify the defendant is indebted in manner and form as set forth and doth so likewise put himself on the country.

This trial is ordered for the eleventh day of July.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant having stated by letter to the Court that he is unavoidably obliged on account of a material evidence being absent to pray that this cause may be put off until the next term.

The Court consent to this cause being put off till the 16th Sept., being the first day of the term.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant likewise appears and says he is not indebted in manner and form as set forth in the declaration, and puts himself on the country.

The plaintiff is ready to verify that he is indebted in manner and form as set forth, and doth likewise so put himself on the country.

This cause is ordered for trial on the eleventh day of July next.

The Sheriff returned that he has duly summoned the defendant.

The plaintiffs appear in person and filed their declaration.

The defendant likewise appears and acknowledges himself indebted to the plaintiffs the sum of ten pounds, fifteen shillings and one penny, with costs of suit.

Nicholas Whitesele, of the Township aforesaid and District aforesaid, yeoman, defendant.

John Green, of Marysburgh, in the District aforesaid, yeoman, plaintiff,
vs.
Joseph Allen, of the same place, in the District aforesaid, yeoman, defendant.

Pierre Plomondeau, of the aforesaid District, labourer, plaintiff,

vs.
Joel Stone, of Leeds, in the District aforesaid, gentleman, defendant.

Alexander McDonell, of Marysburgh, yeoman, in the aforesaid District, plaintiff,

vs.
Joseph Allen, of Marysburgh, of the aforesaid District, yeoman, defendant.

John Cumming and Peter Smith, merchants and co-partners in trade in Kingston District aforesaid, plaintiff,

vs.
John German, Sen., of Sidney, in the District aforesaid, yeoman, defendant.

Ebenezar Washburn, of the County of Lennox, in the District aforesaid, plaintiff,

vs.

Alex. Clark, John Carscallon, and Oliver Church, of Fredericksburgh, in aforesaid District, defendant.

(From last term.)

Solomon Orser, of Kingston, yeoman, in the District aforesaid, plaintiff,

vs.

George Harpie, of Kingston, yeoman, in the District aforesaid, defendant.

(From last term.)

The plaintiff filed his replication in answer to the defendant's plea of justification.

This cause is ordered for trial on the twelfth day of July ensuing.

The Court by rule order a special jury for this cause from application of the parties.

On motion of the plaintiff prays that in consequence of the default prays a writ of enquiry may be awarded.

The defendant appears in person and prays that the default recorded may be taken off.

The Court consent, the defendant paying the costs incurred by the default.

This cause is ordered for trial on the twelfth day of July next.

The Court adjourned until to-morrow at eleven o'clock.

TUESDAY, THE 18th JUNE, 1793.

The Court met pursuant to adjournment.

Present: The same Judges.

Allen vs. German.
(From yesterday.)

The plaintiff appears in person.

The defendant in justification says that he considered his note already paid, and as his order had never been returned and is not indebted in manner and form set forth therefore puts himself on his country.

The plaintiff is ready to verify that the defendant is indebted as set forth in his declaration and puts himself on his country likewise.

This cause is ordered for trial on the twelfth day of July next.

The Court adjourned until Thursday, the 20th June, at eleven o'clock.

THURSDAY, 20th JUNE.

The Court met pursuant to adjournment.

Present: The same Judges.

The defendant on motion to the Court prays for judgment.

The Court having duly considered the pleadings from both parties confirm the verdict of the jury and dismiss the suit with costs for the defendant.

Ebenezar Washburn, of the County of Lennox, in the Midland District, plaintiff,

vs.

Alex'r Clark, of the County aforesaid and District aforesaid, defendant.

On motion the plaintiff begs leave to withdraw his action.

Ebenezar Washburn, of the County of Lennox, plaintiff,
vs.
Alex'r Clarke, Oliver Church, and John Carscallon, of the District aforesaid.

John Darby appears for the defendant having filed his power and prays the Court to grant judgment in this cause.

The Court having duly considered the pleadings from both parties confirm the verdict of the jury and dismiss the suit with costs for the defendant.

The Court adjourned until Monday, the 24th inst.

Alex'r Morton, of Kingston, in the District aforesaid,
vs.
Joseph Robinson, in the Eastern District, now at Kingston, in the District aforesaid.

MONDAY, THE 24th JUNE, 1793.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiff appears in person.

The defendant being duly called made default.

Thomas Markland, of Kingston, merchant in the aforesaid District, plaintiff,
vs.
Stephen Hare, of Marysburgh, in the aforesaid District, defendant.

The plaintiff appears in person.

The defendants being duly called made default.

Thomas Markland, merchant, of Kingston, in the Midland District,
vs.
Duncan Bell, of Fredericksburgh, and Norris Briscoe, of Ernest-Town, yeoman, of the aforesaid District, defendant.

The Sheriff returned that he has caused the defendant to be duly summoned.

By motion of the plaintiff he begs leave to withdraw the suit.

Joseph Allen, of Marysburgh, in the aforesaid District, yeoman, plaintiff,
vs.
John Curnard, of the Township aforesaid, District aforesaid, yeoman, defendant.

Jonathan Allen appears for the plaintiff, having filed his power.

The defendant being duly called made default.

The hand-writing of Augustus Spencer being sworn to in Court by the witness Jonathan Allen.

The Court therefore consider that the plaintiff shall recover of the said defendant the aforesaid sum of three

Joseph Allen, of Marysburgh, of the aforesaid District, yeoman, plaintiff,
vs.
Augustus Spencer, of the Little Lake, yeoman, defendant.

Peter Smith,
merchant,
of Kingston,
as Attorney for
Robt. Kerr,
formerly of
Fredericksburgh,
gentleman, in the
aforesaid District,
plaintiff,

vs.

John Segar, of the
County of Lennox,
yeoman, in the
aforesaid District,
defendant.

pounds, five shillings and one penny, with interest and costs.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and files his power.

The defendant being duly called made default.

SATURDAY, THE 29th OF JUNE, 1793.

The Court met pursuant to adjournment.

Present: The same Judges.

Peter Smith,
as Attorney for
Robt. Kerr,
plaintiff,

vs.

John Segar, of the
County of Lennox,
yeoman,
defendant.
(From Monday
last.)

The plaintiff appears in person.

The defendant likewise appears and prays that the default may be taken off.

The Court consents to the default being taken off.

The defendant acknowledges he is indebted to the plaintiff the sum of eleven pounds, thirteen shillings and fourpence, with three pounds, seven shillings and eightpence for interest.

The Court therefore consider that the plaintiff shall recover of the said defendant the aforesaid sum of eleven pounds, thirteen shillings and fourpence, and three pounds, seven shillings and eightpence for interest due on said note, with costs of suit.

Conrad Vandeuser,
of Adolphus Town,
plaintiff,

vs.

Richard Ferguson,
Jun., as Curator
to the Estate of
Israel Ferguson,
gentleman.

The defendant having filed a bill of costs last term prays judgment thereon.

The Court consider that the defendant shall recover the sum of four pounds, ten shillings, for his attendance at the different terms.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person and filed his declaration.

The defendant likewise appears and says he is not indebted in manner and form as stated in the plaintiff's declaration, therefore puts himself on the country.

The plaintiff says he is indebted in manner and form as stated and likewise puts himself on the country.

This cause is ordered for trial on the eleventh day of July next.

The Court is adjourned until Monday, the 16th day of September next.

Richard Ferguson,
Jun., of Sophias-
burgh, of the afore-
said district,
gentleman,
plaintiff,

vs.

Conrad Vandeuser,
of Adolphus Town,
in the aforesaid
district, merchant,
defendant.

COURT OF COMMON PLEAS.

FROM JUNE TERM, JULY 10th.

The jury were called and sworn:—

- | | |
|---------------------|---------------------|
| 1. Jethro Jackson. | 7. John McDougall. |
| 2. Nathaniel Jones. | 8. John Davy. |
| 3. John Fagler. | 9. Donald McDonell. |
| 4. Lawrence Loon. | 10. John Chibley. |
| 5. Peter McPherson. | 11. Weiden Walker. |
| 6. Andrew Boyce. | 12. Edward Powers. |

Joseph Allen, of
Marysburgh, in
the Midland
District, plaintiff,
vs.

James Gerolamy,
of Marysburgh, in
the district afore-
said, defendant.

John Ben, constable, was sworn to attend the jury.

Evidence sworn for plaintiff: David Dulmage.

Evidences for the defendant: Edward Hicks, Jonathan Allen, William Fairman, John Greer.

The jury withdrew, and having returned into court by their foreman, Jethro Jackson, find a verdict for the plaintiff for six pounds, eight shillings, and with costs of suit.

The plaintiff appears and prays that the Court may proceed to trial.

Barret Mariner and George Hesse maketh oath that the defendant from sickness is not able to appear, and prays the trial may be put off till the 16th Sept., being the first day of the next term.

Messrs. Macauley
and Markland,
merchants, of
Kingston,
vs.

Nicholas Whitesele
yeoman, of
Kingston, in dis-
trict aforesaid.

The plaintiff appears and prays that a writ of enquiry may be awarded to the Sheriff to enquire if the account be just.

Thomas Markland,
merchant, of
Kingston, in the
aforesaid district,
vs.

Duncan Bell &
Norris Briscoe, of
the district afore-
said, defendants.

COURT OF COMMON PLEAS.

The Court met pursuant to adjournment.

The same Judges present.

The plaintiff appears in person.

The jury were called and sworn:—

- | | |
|----------------------|-----------------------|
| 1. Peter Dayly. | 7. Louis Hicks. |
| 2. Robert Farington. | 8. John Smith. |
| 3. Tobias Snyder. | 9. Jonathan Ferguson. |
| 4. Henry Smith. | 10. Donald McCrimon. |
| 5. Jacob Benson. | 11. Ernest Nevellin. |
| 6. Shedrach Ball. | 12. Robert Perry. |

John Greer, of
Marysburgh,
yeoman, plaintiff,
in the Midland
District,
vs.

Joseph Allen, of
Marysburgh,
yeoman, in the dis-
trict aforesaid,
defendant.

Evidences sworn for the plaintiff: David Dulmage, James Gerolamy, Jonathan Allen, John McBean, Edward Hicks.

Evidences sworn for the defendant: John Cumming, David Dulmage, Andrew Hesse, John Hartman.

John Ben, constable, was sworn to attend the jury.

The jury withdrew, and having returned into court by their foreman, Robert Perry, find a verdict for the plaintiff of two pounds, sixteen shillings and fourpence, with costs of suit.

IN THE COMMON PLEAS.

11th JULY (AFTERNOON).

The Court met in pursuance to adjournment.
Present: The same Judges.

Alex'r McDonell,
of Marysburgh, in
the district afore-
said, plaintiff,

vs.

Joseph Allen, of
Marysburgh, yeo-
man, defendant.

The plaintiff appears in person.
The jury called and sworn:—

- | | |
|----------------------------|----------------------|
| 1. William Perry, Foreman. | |
| 2. William Stanton. | 8. Henry Davy. |
| 3. William Bennekin. | 9. Robert Middleton. |
| 4. George Ruttan. | 10. Andrew Johnson. |
| 5. John Segar, Sen. | 11. Henry Smith. |
| 6. Nathan Williams. | 12. David Dulmage. |
| 7. Nicholas Hubble. | |

Evidence for the plaintiff sworn: Thomas Armstrong.

Evidences sworn for defendant: Edward Hicks, Jonas Smith, David Hicks.

John Ben was sworn to attend the jury.

The jury withdrew, and having returned into court by their foreman, William Perry, find for the plaintiff the sum of one pound, sixteen shillings and costs, and that the plaintiff shall return the chains to the defendant and that the defendant shall return to the plaintiff the quantity of iron delivered unto him.

The Court adjourned until to-morrow at eleven o'clock.

FRIDAY, THE 12th JULY.

The Court met pursuant to adjournment.
The same Judges.

The plaintiff appears in person.

The jury were called and sworn:—

- | | |
|------------------------|----------------------|
| 1. Alexander McDonell. | 7. John Davy. |
| 2. David Jackson. | 8. John McDougall. |
| 3. James Hoyle. | 9. Shedrach Ball. |
| 4. Mathias Rore. | 10. John Shibly. |
| 5. Peter Vanamuker. | 11. Donald McCrimon. |
| 6. David Lockwood, | 12. Cornelius Brass. |
| Foreman. | |

Richard Ferguson,
of Sophiasburgh,
plaintiff,
gentleman,
vs.
Conrad Vanduser,
of Adolphus Town,
defendant.
(From last term.)

John Ben was sworn to attend the jury.

Evidences for the plaintiff: John Peters, Henry Young, Sen., Jacob Ferguson.

Evidence for defendant:

The jury withdrew, and having returned into court by their foreman, David Lockwood, find a verdict for the plaintiff for thirty-three pounds, six shillings and two-pence, with costs.

IN THE COMMON PLEAS.

The plaintiff appears in person.

The jury called and sworn:

- | | |
|---------------------|------------------------|
| 1. William Perry. | 7. Edward Powers. |
| 2. William Stanton. | 8. John Smith. |
| 3. Andrew Johnson. | 9. William Benniken. |
| 4. Andrew Boyce. | 10. Nicholas Hubble. |
| 5. Jacob Benson. | 11. Nathaniel James. |
| 6. Lawrence Loon. | 12. Robert Farrington. |

Joseph Allen, of
the aforesaid
district,
yeoman, plaintiff,
vs.
John German,
gentleman,
of Sidney, in the
aforesaid district,
defendant.

The constable John Ben was sworn to attend the jury.

The jury withdrew to consider on their verdict, and having returned into court by their foreman, William Stanton, find a verdict of fifteen pounds, seventeen shillings and ninepence, with three shillings and sixpence for interest, amounting to sixteen pounds, one shilling and three-pence, for the plaintiff, and the plaintiff to pay the costs and charges of the court.

Solomon Orser,
of Kingston, in
the aforesaid dis-
trict, plaintiff,

vs.

George Harpel, of
Kingston, yeoman,
in the aforesaid
district, defendant.

The plaintiff appears in person.

The jury were called and sworn:—

- | | |
|-----------------------|---------------------|
| 1. Donald McDonell. | 7. Weiden Walker. |
| 2. Jonathan Ferguson. | 8. Ernest Nevillen. |
| 3. Tobias Snyder. | 9. George Ruttan. |
| 4. Henry Davy. | 10. Robert Perry. |
| 5. Nathan Williams. | 11. Henry Smith. |
| 6. Lewis Hicks. | 12. David Dulmage. |

Evidences sworn for the plaintiff: Michael Taylor, David Babcock, William Taylor.

Evidences sworn for the defendant: Buton Guirot, John Barne.

A constable was sworn to attend the jury, John Ben.

The jury withdrew, and having returned into court by their foreman, Robert Perry, find a verdict for the plaintiff of one hundred and fifty pounds, with costs of suit.

SEPTEMBER TERM. 16th.

The Court met pursuant to adjournment.

Present: The Honourables Richard Cartwright, Jun., Neil McLean, and Hector McLean.

John McKenny, of
Ernest Town, in
the aforesaid,
district,
yeoman, plaintiff,

vs.

Peter McPherson,
of township afore-
said, in the district
aforesaid, yeoman,
defendant.

The Sheriff returned that he has duly summoned the defendant.

James Simson appears for the plaintiff under authority of a letter.

The defendant likewise appears in person and says he is not indebted in manner and form as stated in the plaintiff's declaration and puts himself on the country.

James Simpson says he is indebted in manner and form and doth so likewise.

This cause is ordered for trial on the eighth day of October next.

Arthur McCormick,
of Fredericks-
burgh, trader, in
the aforesaid
district, plaintiff,

vs.

Daniel McMullen,
of Fredericks-
burgh, in the
aforesaid district,
dealer in furs,
defendant.

The Sheriff returned that he has duly summoned the defendant.

It appearing to the Court that Mr. McDonell is in a bad state of health this cause is put off until Monday, the 23rd September.

Mr. McDonell being duly authorized by a power of attorney to appear for the plaintiff, who is absent from Canada, the power of attorney having been filed in court.

The plaintiff appears in person.

The defendant likewise appears and says he is not indebted in manner in form as stated in the declaration and puts himself on the country.

And the plaintiff doth so likewise.

This cause is ordered for trial on Tuesday, the eighth day of October next.

The plaintiffs appear in person.

The defendant being called made default.

Pierre Plomondeau,
of Kingston, in the
aforesaid district,
labourer, plaintiff,
vs.

Joel Stone, of
Leeds, in the afore-
said district,
gentleman,
defendant.
(From last term.)

McCawley & Mark-
land, merchants,
of the town of
Kingston,
plaintiffs,
vs.

Nicholas White-
sele, in the Town-
ship of Kingston,
yeoman, defendant.
(From the last
term.)

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person.

The defendant doth so likewise and says he is not indebted in manner and form as stated in said plaintiff's declaration and puts himself on the country, and the plaintiff doth so likewise.

This cause is ordered for trial on Tuesday, the eighth day of October next.

George Johnson,
of Kingston, in
the aforesaid dis-
trict, plaintiff,
vs.

George Campbell,
of township afore-
said, defendant.

The defendant, George Harpel, moves arrest of judgment in said cause and that the verdict may be quashed, which motion is filed in the records. The plaintiff being present in court a rule is granted to shew cause why judgment should not be arrested agreeable to the motion on Monday, the twenty-third day of September inst.

Solomon Orser
vs.
George Harpel.
(From October
sitting.)

THURSDAY, THE 19th SEPTEMBER, 1793.

The Court met.

Present: The same Judges.

The defendant Conrad Vandeusen, moves for a new trial, which motion is filed in the Records.

A Rule of Court is granted to show cause to the said Richard Ferguson why a new trial may not be obtained until to-morrow, the 20th inst., he having represented to the Court that he would be ready at that time.

Richard Ferguson
vs.
Vanduser.
(From sittings in
July.)

Edward Hicks appears for the plaintiff, having first filed his power, moves for judgment in the said cause.

The verdict of the jury being only for one pound, sixteen shillings and one penny, the Court take time until to-morrow, the 20th inst., to consider of said verdict.

Alex'r McDonell,
plaintiff,
vs.
Joseph Allen,
defendant.
(From July.)

John Green,
plaintiff,
vs.
Joseph Allen,
defendant.

The plaintiff appears and moves for judgment in said cause.

The Court having duly weighed the verdict of the said jury consider that the plaintiff shall recover of the said defendant the sum of two pounds, sixteen shillings and fourpence, with costs of suit.

Samuel Rose,
plaintiff,
vs.
John Vogely.
(From April, 1793.)

The plaintiff appears and prays judgment may be granted in said cause.

The Court having duly weighed the verdict of said jury consider that the said plaintiff shall recover of the said defendant the sum of one pound, ten shillings, with costs of suit taxed at seven pounds and sixpence.

Macauley & Mark-
land, plaintiff,
vs.
Nicholas White-
sele, defendant.

The plaintiff appears.

The cause is ordered for trial on the eighth day of October next ensuing.

FRIDAY, THE 20th DAY OF SEPTEMBER.

The Court met pursuant to adjournment.

The same Judges present.

McDonell,
plaintiff,
vs.
J. Allen,
defendant.

Edward Hicks appears for the plaintiff and prays judgment.

The Court having duly weighed the verdict of the jury consider the plaintiff shall recover of the defendant the sum of one pound, sixteen shillings and one penny, with costs taxed at six pounds.

Richard Ferguson,
plaintiff,
vs.
Conrad Vanduser,
defendant.
(From yesterday.)

The plaintiff appeared and filed his replication.

The defendant appears.

The plaintiff having consented to take judgment for twenty-two pounds, three shillings and sevenpence, the Court do consider that the plaintiff shall recover the said sum with costs and charges, instead of thirty-three pounds, six shillings and twopence awarded by the verdict of the jury.

The defendant acquiesces to the said arrangement.

MONDAY, 23rd SEPTEMBER.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiff appears in person.

The defendant likewise appears and says he is not indebted in manner and form as stated in plaintiff's declaration, and puts himself on the country.

And the plaintiff doth do likewise.

Arthur
McCormick,
plaintiff,
vs.
Daniel McMullen,
defendant.
(From Monday
last.)

This cause is ordered for trial on Tuesday, the eighth day of October next ensuing.

The plaintiff shews cause as ordered for this day and sets forth his reasons by a written paper delivered to the Court, which is filed in the Records.

Solomon Orser
vs.
George Harpel.
(From Monday
last.)

The defendant says in reply it was not lawful for the jury to guess that the plaintiff was married to the said Mary Orser and thereon found a verdict for such heavy damages, but that the same marriage ought to have been proved by the plaintiff in open court, which he having neglected to do prays the said verdict may be set aside as illegal.

The Court will take time until Monday, the 30th inst., to consider the matters alledged by the said parties in this cause.

The Court adjourned until Monday, the 30th inst.

MONDAY, THE 30th SEPTEMBER.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiff and defendant appear from Monday last.

Orser
vs.
Harpel.

This is an action for criminal conversation with the plaintiff's wife in which he hath obtained a verdict for one hundred and fifty pounds damages. But it appears that at the trial the plaintiff neglected to produce any evidence of this marriage. Upon this ground the defendant hath moved an arrest of judgment, and having duly weighed what hath been urged by the parties we are now to give our decision. There is no principle in law more clearly established than that it is incumbent on a plaintiff to substantiate by proof every allegation that is necessary to support his action. In such cases as the present an actual marriage of the parties is the only foundation of a claim to damages, a circumstance so material and which is the very gist of the action, ought not to be assumed, it must be fully established by proof produced at the trial, and the plaintiff having omitted to bring evidence to this point, his neglect is fatal to his cause. The verdict must be set aside and judgment of non-suit entered.

This decision, in which the Court is unanimous, is founded on the plainest principles of law, corroborated by the case of *Morris vs. Miller*, reported in *Barrow*, page 205.

TUESDAY, THE 8th OF OCTOBER.

The Court met.

Present: The Honourables Richard Cartwright, Jun.,
Neil McLean and Hector McLean, Esquires.

Plomondeau
vs.
Stone.
(From Sept. term.)

The plaintiff appeared in person.

The defendant being called made default.

McKenny
vs.
McPherson.
(From Sept. term.)

The plaintiff being called did not appear on account
of his wife being in a bad state of health.

The defendant appears and says no notice has been
given to put off the trial and prays this action may be dis-
continued.

The Court adjourned until four o'clock.

The Court met pursuant to adjournment.

Present: The same Judges.

Robert Macauley &
Thomas Markland
vs.
Nicholas White-
sele.

The plaintiff appears in person.

The defendant doth so likewise.

The jury were called and sworn.

- | | |
|----------------------|-----------------------|
| 1. Frederick Baker. | 7. Jacob Corner. |
| 2. John Edgar. | 8. John Asselstine. |
| 3. John Ham. | 9. John Burby. |
| 4. Paul Corner. | 10. William Williams. |
| 5. John Vandican. | 11. David Williams. |
| 6. Peter Asselstine. | 12. Bastion Hogle. |

For want of evidence on part of the plaintiff the Court
dismiss the jury and that the said plaintiffs are non-
sued.

The Court adjourned until to-morrow at four o'clock.

9th OCTOBER.

The Court met pursuant to adjournment.

Present: The same Judges.

Plomondeau
vs.
Stone.
(From Sept. term.)

The plaintiff appears in person.

Archibald Fairfield having filed a power for Joel Stone
praying on account of sickness that this cause may be put
off until the second Tuesday next January.

The Court grant a rule that this cause may be put off
on the defendant's paying the costs incurred for the plain-
tiff's attendance and witnesses.

Arthur McCormick
vs.
Daniel McMullen.
(From Sept. term.)

The plaintiff appears in person.

The defendant appears.

The jury were called and sworn:—

- | | |
|--------------------|-------------------------|
| 1. Emmerson Burly. | 7. Francis Vandebogart. |
| 2. Freeman Burly. | 8. Peter Asselstine. |
| 3. James Jackson. | 9. Frederick Baker. |
| 4. George Burk. | 10. Elvia Yeomans. |
| 5. John Horning. | 11. Michael Daderick. |
| 6. David Purdy. | 12. Daniel Johnson. |

Evidence sworn for plaintiff: John Detler.

Evidence sworn for defendant.

Constable sworn to attend the jury.

The jury withdrew to consider of their verdict, and having returned into court by their foreman, Emmerson Burly, find a verdict for the plaintiff with damages of two hundred and sixty pounds, fifteen shillings and ninepence farthing, Halifax currency.

COURT OF COMMON PLEAS.—DECEMBER TERM.

THURSDAY, 17th DECEMBER, 1793.

The Court met pursuant to adjournment.

Present: The Honourables Richard Cartwright, Jun., Neil McLean and Hector McLean, Esquires.

The Sheriff returned that he has duly summoned the defendant.

The defendant appears in person and says he is not indebted in manner and form as set forth in plaintiff's declaration, and prays that this action may be enquired of the country.

The plaintiff likewise appears and says he is indebted in manner and form as set forth and doth so likewise.

This cause is ordered for trial at Adolphus Town on Tuesday, the fourteenth of January next ensuing.

John Charles Stewart appears for the defendant, having filed his power of attorney duly authorized from defendant and files his plea in demurrer.

The plaintiff prays time until Friday, the 20th instant, to reply.

It is ordered by the Court that the plaintiff do make his replication on Friday, the 20th instant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears in person.

The defendant being duly called made default.

John Baptiste Bauchette, Captain in His Majesty's Marine Dept., gentleman, of Kingston, in the aforesaid district, plaintiff,

vs.

Bemslee Peters, of the aforesaid district and town aforesaid, gentleman, defendant.

Christopher Georgen, Kingston, in the aforesaid district, taylor, plaintiff,

vs.

David Ross, attorney for Peter McFarlane, of Montreal, defendant.

Philip Pember, of the Town of Kingston, in the aforesaid district, carpenter, plaintiff,

vs.

Edward Walker, of Kingston, in the aforesaid district, defendant.

Joseph Pritchard,
of the Town of
Kingston, in the
aforesaid district,
taylor, plaintiff,
vs.
Stephen McLean,
now at Kingston,
in the aforesaid
district, defendant.

The Sheriff returned that he has duly summoned the defendant.

The defendant appears and says he is not guilty in manner and form as set forth in plaintiff's declaration and prays it may be inquired of by the country.

The plaintiff appears and is ready to verify and doth so likewise.

This cause is ordered for trial on Tuesday, the fourteenth day of January next, at Adolphus Town.

Daniel Carre, of
Ernest Town, in
the aforesaid district,
gentleman,
plaintiff,

vs.
Nathan Williams
and Robert
Williams, of
Ernest Town, in
aforesaid district,
yeoman,
defendants.

The Sheriff returns that he has duly summoned the defendants.

The plaintiff appears in person.

The defendants appear and pray leave from the Court until Friday next, the 20th instant, to put in their plea to the plaintiff's declaration.

The Court order that the defendants' plea be made on Friday next, the 20th instant.

Marcus Snyder, of
Ernest Town, in
the aforesaid district,
yeoman,
plaintiff,

vs.
David Lent, of
township aforesaid
and district
aforesaid, yeoman,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The defendant appears and says he did give the plaintiff a promissory note that he did tender the eight dollars as specified in said note, prior to the suit being commenced, and likewise offered to pay the residue in produce agreeable to the tenor and condition of said note, and that he is still ready and willing to comply with the conditions of the said note, but the plaintiff doth and still refuses to accept the same.

The plaintiff says that the defendant hath never tendered payment of the said note conformable to the said conditions, which he prays may be inquired of by the country, and the defendant doth so likewise.

This cause is ordered for trial on Tuesday, the 16th January next, at Adolphus Town.

Alexander
Chisholm, of
Thurlow, of the
district aforesaid,
gentleman,
plaintiff,

vs.
John Dafoe, of
Fredericksburgh,
in the aforesaid
district, yeoman,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The defendant appears in person and says he is not indebted in manner and form as set forth in plaintiff's declaration, and prays this may be enquired of by the country.

And the plaintiff doth so likewise.

This cause is ordered for trial on Tuesday, the fourteenth day of January next, at Adolphus Town.

The Sheriff returns that he has duly summoned the defendant.

The defendant appears in person and says he is not indebted in manner and form as set forth in plaintiff's declaration and prays this may be enquired of by the country.

The plaintiff appears and says he is indebted in manner and form and doth so likewise.

This cause is ordered for trial on the second Tuesday in April, at Kingston, in consequence of a material witness being absent, it being by the consent of the parties.

The Sheriff returns that he has duly summoned the defendant.

The plaintiff appears in person.

The defendant being duly called made default.

The Court adjourned till Friday, the 20th inst., at eleven o'clock.

William Cottier, of Ernest Town, in the aforesaid district, yeoman, plaintiff,

vs.
Ichabod Hanly, of township aforesaid, and district aforesaid, yeoman, defendant.

William Ransier, of the township of Kingston, in the district aforesaid, plaintiff,

vs.
Joseph Ferris, of the district and township aforesaid, defendant.

FRIDAY, THE 20th INST.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiff appears and prays for judgment conformably to verdict given on ninth October.

The defendant being called does not appear.

The Court consider that the plaintiff shall recover of the defendant the said verdict of jury amounting to two hundred and sixty pounds, fifteen shillings and ninepence farthing Halifax currency, with costs of suit.

Arthur McCormick
vs.
Daniel McMullen.
From after sittings last term.

The plaintiffs being called do not appear.

The defendant appears and prays that the Court will award his costs on judgment of non-suit entered in October sittings.

The Court consider the defendant shall recover of the plaintiffs the sum of one pound, four shillings for his costs.

Robert McCawley & Thomas Markland, plaintiffs,
vs.
Nicholas White-sele, defendant.
From after sittings last term.

The plaintiff being called does not appear.

The defendant appears and prays the Court will award his costs on judgment of non-suit entered at October sittings.

The Court consider the defendant shall recover of the plaintiff the sum of one pound, six shillings and sixpence for his costs.

McKenny
vs.
McPherson.
From after sittings in October.

Christopher
Georgen
vs.
Ross, attorney.
(From Tuesday
last.)

The plaintiff appears and filed his replication to defendant's plea.

John Charles Stewart appears and asks time till Tuesday next, the 24th instant, to put in his answer.

The Court grant a rule for the defendant to answer plaintiff's plea on Tuesday next.

Philip Pember
vs.
Edward Walker.
(From Tuesday
last.)

The plaintiff appears in person.

The defendant appears and prays the default may be taken off.

The Court consent to the default being taken off paying costs.

The defendant says he is not guilty in manner and form set forth in plaintiff's declaration and prays this may be inquired of by the country, and the plaintiff doth so likewise.

The Court order this cause for trial at Adolphus Town on Tuesday, the fourteenth day of January next.

Titus Simons,
Senior, of
Kingston, in the
aforesaid district,
plaintiff,
vs.
Neil McLean, of
Kingston, in the
aforesaid district,
gentleman,
defendant.

The Sheriff returned that he has duly summoned the defendant.

The plaintiff appears.

The defendant prays till Tuesday next to make answer to plaintiff's declaration.

The Court makes a rule granting until Tuesday next, the 24th inst., to put in his plea.

The Court make a rule that in future no costs will be taxed by the Court till it appears previous notice has been given by the party applying for such taxes to the opposite party in writing that he will apply on a particular day for his costs.

It is ordered that a copy of this rule be pasted up in the Clerk's office.

The court adjourns until Tuesday next, at eleven o'clock.

TUESDAY, THE 24th DECEMBER.

The Court met pursuant to adjournment.

Present: The same Judges.

Georgen
vs.
Ross, as attorney
to McFarlane.
(From Tuesday
last.)

The plaintiff appeared in person.

John Charles Stewart appeared for the defendant and filed his rejoinder to the plaintiff's replication.

The Court will further hear the parties in this cause the first day of the term in March next ensuing agreeable to their own request.

The plaintiff appears in person.

The defendant appears and filed his plea in bar.

The plaintiff in replication says he did not know the defendant had any right or title to the premises, and and although he paid money to the defendant it was not on account of rent, neither did the defendant grant any receipt for it as rent.

The Court will further hear the parties on Thursday next in this action.

The Court adjourned till Thursday next at eleven o'clock.

Titus Simons
vs.
Neil McLean.

THURSDAY, THE 26th OF DECEMBER.

The Court met pursuant to adjournment.

Present: The Honourables Richard Cartwright, Jun., and Hector McLean, Esquires.

The plaintiff appears in person.

The defendant appears.

The Court having heard the argument from both parties will give judgment in this cause on Tuesday, the 31st day of December instant.

The Court adjourned till Tuesday, the thirty-first of December, at eleven o'clock in the forenoon.

Titus Simon,
plaintiff,
vs.
Neil McLean.

TUESDAY, THE 31st DECEMBER, 1793.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiff appears.

The defendant likewise.

The plaintiff in his declarations says the defendant distrained and without shewing that he had any right or title to the premises. And again, in his replication, saith the plaintiff never showed him any title to the premises. He neither denies the defendant's title or authority, or that the rent which he hath distrained is due, the only material points in which a question can be made. In the act of levying a distress for rent it is not usual nor is it necessary to set forth the particulars of the distrainor's title. It is sufficient to say it is in behalf of the landlord or his agent for rent due. And if the tenant intends to controvert the title or deny that there is rent in arrears he should do so explicitly in his replication. Therefore for want of sufficient replication it is granted that the said Neil McLean have a return of the said goods.

Titus Simon
vs.
Neil McLean.

TUESDAY, 14th JANUARY, ADOLPHUS TOWN.

The Court met pursuant to adjournment.

Present: The Honourables Richard Cartwright, Jun.,
Neil McLean, and Hector McLean, Esquires.

Alex'r Chisholm
vs.
John Dafoe.
(After sittings.)

The plaintiff appeared.

The defendant likewise appeared.

The jury were called and sworn:—

- | | |
|--------------------|----------------------|
| 1. Henry Davis. | 7. Nicholas Lake. |
| 2. David Palmer. | 8. Henry Spencer. |
| 3. Henry Hover. | 9. Isaac Parliament. |
| 4. Edward Rikeman. | 10. Henry Simmons. |
| 5. James Morden. | 11. John Reid. |
| 6. John Spencer. | 12. Richard Morden. |

Evidence sworn for the plaintiff: William Bell, Abraham Dafoe, Duncan Bell, Alexander Clarke, Andrew Rikely.

Evidence sworn for defendant.

The jury withdrew to consider of their verdict, and having returned into court by their foreman, John Reid, find a verdict for the defendant.

The Court adjourned until twelve o'clock to-morrow.

WEDNESDAY, THE 15th JANUARY, 1794.

The Court met pursuant to adjournment.

Present: The same Judges.

Pritchard
vs.
McLean.

The plaintiff appears.

The defendant likewise.

The jury were called and sworn:—

- | | |
|------------------------|----------------------|
| 1. John West. | 7. Peter Rattan. |
| 2. Christian Peterson. | 8. Barnard Cole. |
| 3. Conrad Vandeuser. | 9. Nicholas Vassals. |
| 4. William Foster. | 10. Zadock Thrasher. |
| 5. Joseph Clapp. | 11. David Harris. |
| 6. Nicholas Peterson. | 12. Robert Wright. |

Evidences called for plaintiff: Thomas Elms Mathews, William Simpson, and John Thorn.

Evidences for defendant: Daniel McMullen and John Simpson.

John Ben, constable, was sworn to attend the jury.

The jury withdrew to consider of their verdict, and having returned into court by their foreman, Conrad Vandeuser, find a verdict of fifteen pounds currency for the plaintiff, with costs of suit.

Due notice having been given to the plaintiff, the parties consent to put off this cause until the 3rd of April, 1794.

Pember
vs.
Walker.

The Court adjourned until Monday, 17th March, at Kingston.

DISTRICT OF MECKLENBURG, KINGSTON.

COURT OF COMMON PLEAS.

SATURDAY, THE 5th DAY OF JUNE, 1790.

Present: Richard Cartwright, Jun., Esq.

The plaintiff demands of the defendant the sum of seven pounds currency due per his promissory note.

Conrood Vanduser
vs.
Timt. Prindle.

The defendant being called made default. P. Clark appears for the plaintiff and produces the defendant's note due the plaintiff for the sum of six pounds, fifteen shillings and eightpence currency, the Court do therefore order that the plaintiff shall recover of the defendant the said sum, with costs taxed at thirteen shillings and twopence.

SATURDAY, THE 12th JUNE, 1790.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Esq.

The plaintiff demands of the defendant the sum of one pound, fifteen shillings for three and a half bushels of wheat.

Henry Kusenburg
vs.
Fred'k Piper.

The defendant appears and produces an account against the defendant which the Court cannot admit to be set-off against the demands of the plaintiff, for want of sufficient proof to substantiate his said claim, but it appears by the acknowledgment of the plaintiff that the defendant has a just claim of twenty-two shillings, the Court do therefore order that the defendant shall pay the balance of thirteen shillings, with costs taxed at fourteen shillings and fourpence, reserving to the defendant the right to sue for any just demand he may have, exclusive of the sum already allowed.

The plaintiff demands of the defendant the sum of nine pounds, ten shillings, due him on account.

John Foster
vs.
Simon J. Cole.

The defendant being called made default.

It appears to the Court by the written obligation of the defendant that he is justly indebted to the plaintiff the said sum of nine pounds, ten shillings. The Court do therefore order that the plaintiff shall recover the same with costs taxed at thirteen shillings and twopence.

The Court adjourned to Saturday next.

SATURDAY, 19th JUNE.

Present: Neil McLean, Esq.

Arch'd Thomson
vs.
John Duncan.

The plaintiff demands the sum of ten pounds currency for damages for having inveigled his servant man. The Court having heard the parties, it appears that plaintiff had refused to accept the labour of his said servant, and it was after that the defendant did employ him, and it does not appear by sufficient proof that the defendant did inveigle him as set forth in the declaration. The Court do therefore order that the plaintiff do pay costs taxed at thirteen shillings and twopence.

The Court adjourns to Saturday next.

SATURDAY, 26th JUNE, 1790.

Present: Richard Cartwright, Esq., and Neil McLean, Esq.

No business.

The Court adjourns to Saturday, the 24th July.

SATURDAY, 24th JULY.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Esq., and Neil McLean, Esq.

Mathew Donavan
vs.
Rich'd Bushell.

The plaintiff demands of the defendant seven shillings currency for fees due him as clerk of the Land Board. The defendant being duly called made default.

It appears to the Court that the defendant is justly indebted to the plaintiff the said sum, the Court do therefore order that the plaintiff shall recover the sum with costs taxed at twelve shillings and twopence.

Elizabeth Thomson
vs.
Reaford & Sheriff.

The plaintiff demands of the defendants the sum of one pound, one shilling currency for cheese sold them.

It appears to the Court that the plaintiff had authorised Mr. Farley to receive the said sum of one pound, one shilling from the defendants, and the defendant Sheriff declares upon oath that Mr. Farley deducted that sum from wages due him.

Thomas Reaford upon oath also declares that Mr. Farley acknowledged to him that he had received payment from Sheriff. The Court do therefore order that this cause be dismissed, and that the plaintiff shall pay costs taxed at thirteen shillings and twopence currency.

The plaintiff demands of the defendant the sum of one pound, five shillings for amount of account.

It appears by evidence that the defendant is justly indebted to the plaintiff the said sum, the Court do therefore order that the defendant shall pay the same, with costs taxed at twelve shillings and twopence.

The Court adjourns to Saturday next.

William Atkinson
vs.
John McMichel.

SATURDAY, 31st JULY, 1790.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Esq., and Neil McLean, Esq.

The plaintiff demands of the defendant the sum of two pounds, fifteen shillings and ninepence currency for sundries delivered him.

The Court having heard the parties will deliberate on the merits of this cause, and will give judgment on Saturday next.

John Ferguson
vs.
Joseph Pritchard,
taylor.

The plaintiff demands of the defendant the sum of eight pounds currency for damages in making hay in his meadow.

The defendant appears in person and prays that this cause may be heard next Saturday, his evidence not being present.

The Court do order that this cause may be tried as prayed.

Gilbert Orser
vs.
Joseph Ferris.

The plaintiff demands of the defendant the sum of six pounds currency for amount of account and damages to his house and garden.

The defendant appears in person and prays that this cause may be heard on Saturday, the fourteenth day of August.

The Court do order that this cause may be tried as prayed.

The Court adjourn to Saturday next.

John Holmes
vs.
John Smith.

SATURDAY, 7th AUGUST.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Esq., and Neil McLean, Esq.

The plaintiff demands of the defendant the sum of eight pounds for damages in making hay in his meadow without leave.

John Ferguson
vs.
Joseph Pritchard.
From last term.
Gilbert Orser
vs.
Joseph Ferris.

The Court having heard the parties do order that the plaintiff shall have the hay made in the said meadow, and that the plaintiff shall pay the defendant one pound, ten shillings for his trouble in making it, and that the defendant shall pay costs taxed at twelve shillings and twopence.

SATURDAY, 15th AUGUST.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., Esq., and Neil McLean, Esq.

John Holmes
vs.
John Smith.

The plaintiff demands of the defendant the sum of six pounds currency for amount of account and damages to his house and garden.

The Court having heard the parties, likewise the evidence in this cause, do order that the defendant shall pay the plaintiff ten shillings damages and costs taxed at fourteen shillings and sixpence.

The Court adjourns to Saturday next.

SATURDAY, 21st AUGUST, 1790.

The Court met pursuant to adjournment.

Present: The two Judges.

No business.

The Court adjourns to Saturday next.

SATURDAY, 21st AUGUST.

The Court met pursuant to adjournment.

Present: The same Judges.

No business.

The Court adjourn to Saturday next.

SATURDAY, 4th SEPTEMBER, 1790.

The Court met pursuant to adjournment.

Present: Neil McLean, Esq.

Oliver Arnold
vs.
William Fairfield.

The plaintiff demands of the defendant the sum of one pound currency for unlawfully detaining his cloaths.

The Court having heard the parties, it appears that the plaintiff is indebted to the defendant the sum of four shillings and ninepence currency, the Court do therefore order

that the plaintiff shall satisfy the same, and that the defendant shall deliver whatever he has detained belonging to the plaintiff and the plaintiff shall pay costs taxed at eleven shillings and twopence.

SATURDAY, 11th SEPTEMBER.

The Court met pursuant to adjournment.

Present: The two Judges.

No business.

The Court adjourns to Saturday, the second day of October next.

SATURDAY, 2nd OCTOBER, 1790.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Esq., and Neil McLean, Esq.

The plaintiff demands of the defendant the sum of seven pounds, thirteen shillings and fourpence for amount of sundry accounts.

Peter Wartman
vs.
Law'e Eldam.

The defendant being duly called made default.

The plaintiff demands of the defendant the sum of seven pounds, six shillings, for his promissory note, which is exhibited and filed.

James Robins
vs.
Dan'l McQuinn.

The defendant appears in person and acknowledges the said debt.

The Court do therefore order that the plaintiff shall recover the same with costs taxed at eleven shillings and twopence.

The plaintiff demands of the defendant the sum of eighteen shillings for amount of account.

Sam'l Thomson,
Oliver Church,
plaintiffs,
vs.
Ebenezer
Washburn.

The Court having heard the parties it appears that the defendant is justly indebted to the plaintiff the said sum of eighteen shillings, and they therefore order that the plaintiff shall recover the same with costs taxed at twelve shillings and sixpence.

The plaintiff demands of the defendants the sum of seven pounds, eleven shillings, for amount of account and damages.

Eben'zr Washburn
vs.
Sam'l Thomson,
Oliver Church.

The Court having fully heard the parties and their respective evidence, likewise the different exhibits filed in

this cause, do order and adjudge: That the plaintiffs shall recover of the defendants the sum of one pound currency for this debt and damages with costs taxed at fifteen shillings and sixpence.

James Kemp
vs.
Ebn'r Washburn.

The plaintiff demands of the defendant the sum of six pounds currency for damage for breach of agreement.

The defendant appears and says that he has made no agreement with the plaintiff.

The Court having examined Jas. McTagart and Geo. Finkle upon oath, it appears that the defendant did enter into an agreement with the plaintiff for to clear a certain quantity of land for the defendant; it also appears to the Court that the plaintiff agreed to let the defendant have the choice of all his cows except one in part payment of the work done for the plaintiff, and that after the said work was done the plaintiff did refuse to let the defendant have the choice of his cows.

The Court do therefore order that the plaintiff shall recover of the defendant the sum of six pounds currency with costs taxed at one pound, three shillings and twopence.

Zacharias
Trompour
vs.
Joseph Allen.

The plaintiff demands of the defendant the sum of five pounds currency for taking wheat, the property of the plaintiff.

The defendant appears and says that he has not been legally summoned to appear in this cause.

It does not appear to the Court that the defendant has been duly summoned, therefore do dismiss this action with costs—ten shillings and twopence.

Joseph Allen
vs.
Jno. Martin,
trader.

The plaintiff demands of the defendant the sum of eight pounds, ten shillings for promissory note and amount of account.

The defendant being duly called made default.

Joseph Allen
vs.
Wm. Cambell.

The plaintiff demands of the defendant the sum of ten pounds currency for his promissory note and amount of account.

The defendant being called made default.

Adjourned to Saturday next.

SATURDAY, 9th OCTOBER.

The Court met pursuant to adjournment.
Present: The two Judges.

The plaintiff appears in person and filed a warrant of attorney from George Harper, Mic'l Taylor and Mic'l Dedrick, to sue in their names for certain debts due them by the defendant, account of which are duly filed.

The Court having examined the said account and the above named persons having duly attested their respective demands the Court do order and adjudge that the plaintiff shall recover of the defendant the sum of six pounds, eighteen shillings and fourpence, with costs taxed at fifteen shillings and sixpence.

Peter Wartman for himself, George Harper, Mic'l Taylor & Mich'l Dedrick,
vs.
Law'e Eldam.
(From last Saturday.)

The plaintiff appears in person and produced and filed the defendant's promissory note and account amounting to nine pounds, sixteen shillings and sixpence.

The Court do order that the plaintiff shall recover of the defendant the said sum with costs taxed at eleven shillings and twopence.

Joseph Allen
vs.
William Cambell.
(From last Saturday.)

The plaintiff appears and filed the defendant's note-of-hand and account amounting to the sum of eight pounds, five shillings and ninepence.

The Court do order that the plaintiff shall recover of the defendant the said sum with costs taxed at fourteen shillings and tenpence.

Joseph Allen
vs.
Martin, Trader.
(From last Saturday.)

The plaintiff demands of the defendant the sum of one pound, nineteen shillings for amount of account.

The defendant being called made default.

The plaintiff produced and filed his account, duly attested, amounting to the sum of one pound, fourteen shillings and tenpence currency.

The Court do order that the plaintiff shall recover of the defendant the said sum, with twelve shillings and twopence costs.

Joseph Allen
vs.
Dan'l McQuinn.

The plaintiff demands of the defendant the sum of six pounds currency for wheat.

It appears to the Court that the plaintiff had permission to sow wheat on a lot of land formerly the property of S. T. Cole, which land has since been conveyed to the defendant, since which time the defendant considered the crop arising from the said wheat to be his property, but it does not appear to the Court that the defendant has any the least title to the said wheat, therefore the Court do order that the defendant shall deliver to the plaintiff the said wheat and pay the sum of twelve shillings and twopence costs.

Zacharias Trompour
vs.
Joseph Allen.

Peter Coles
vs.
Joseph Allen.

The plaintiff demands of the defendant the sum of six pounds for wheat.

It appears to the Court this demand is exactly the same nature as the last action against the defendant. The Court do therefore order that the plaintiff shall recover his wheat and that the defendant shall pay costs taxed at thirteen shillings and twopence.

Isaac Cole
vs.
Joseph Allen.

Simon J. Cole appears for the plaintiff and demands of the defendant the sum of six pounds for wheat.

The defendant demands that the said Simon J. Cole may produce his warrant of attorney to appear in this cause.

The said S. J. Cole having no warrant to appear to this action the Court do order that the plaintiff shall pay costs taxed at twelve shillings and twopence.

Adjourned to Saturday, the 23rd inst.

SATURDAY, 23rd OCTOBER, 1790.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., Esq., and Neil McLean, Esq.

Peter Woodcock
vs.
Abra'm Woodcock.

The plaintiff demands of the defendant the sum of ten pounds currency for wheat and corn and damages in having unlawfully kept the same from the plaintiff.

It appears that the plaintiff had assisted to plant and tend about two and a half acres of corn on the defendant's land, on shares, and it appears that the defendant has offered to deliver the plaintiff one third part of the produce, and it further appears to the Court that such a share was sufficient for the plaintiff's labour, the Court do therefore order that the defendant shall deliver thirteen and half bushels of said corn with one third share of stalks, etc., supposed to be third part, and that the plaintiff shall pay costs taxed at seventeen shillings and twopence.

The Court adjourns to Saturday next.

SATURDAY, 30th OCTOBER.

The Court met pursuant to adjournment.

Present: The two Judges.

No business.

The Court adjourns to Saturday next.

SATURDAY, 6th NOVEMBER.

The Court met and adjourned.

No business.

SATURDAY, 13th NOVEMBER.

The Court met and adjourned to Saturday, the 4th December next.

SATURDAY, 4th DECEMBER, 1790.

The Court met and adjourned to Saturday, the eleventh.

No business.

SATURDAY, 11th DECEMBER.

The Court met.

Present: Richard Cartwright, Jun., Esq., and Neil McLean, Esq.

The plaintiff demands of the defendant the sum of six pounds, fifteen shillings currency due for his promissory note. The defendant being duly called made default.

Thomas Dorland appears for the plaintiff and presents the defendant's promissory note for the aforesaid sum.

The Court do therefore order that the plaintiff shall recover of the defendant the sum of six pounds, fifteen shillings for his debt. Twelve shillings and sixpence costs.

Nathaniel Somes
vs.
Daniel McMullan.

The plaintiff demands of the defendant the sum of two pounds, eleven shillings and eightpence currency, due for balance of account. The defendant being duly called made default.

The plaintiff appears in person and exhibits an account against the defendant for the sum of two pounds, eleven shillings and sevenpence currency, to which he has duly sworn.

The Court therefore order that the plaintiff shall recover of the defendant the said sum, with thirteen shillings and twopence costs.

Simon J. Cole
vs.
Joseph Carnahan.

The plaintiff demands of the defendant the sum of ten shillings currency for account.

The defendant appears in person.

The Court having heard the parties are of opinion that the plaintiff has no just grounds of action of the defendant.

The Court therefore do order that the plaintiff do pay costs taxed at thirteen shillings and twopence.

John Foster
vs.
Jacob Loucks.

John Foster
vs.
Dan'l McMullan.

The plaintiff demands of the defendant the sum of five pounds, eight shillings and twopence.

On motion of the plaintiff, the Court orders that this cause may be tried on Saturday next.

John decourcy Gill
vs.
Thomas Dorland.

The plaintiff demands of the defendant the sum of one pound currency for amount of account.

The plaintiff being duly called made default.

The defendant appears in person and represents to the Court that he conceives himself injured by the plaintiff, in not appearing to prosecute this action, and that the defendant has been at much expense in bringing his witness and that he is not indebted to the plaintiff, therefore prays that the Court will order the plaintiff to pay his costs.

The Court having considered the demand of the defendant do order that the plaintiff shall pay the defendant the sum of fifteen shillings and the plaintiff to pay costs.

The Court adjourns to Saturday next.

SATURDAY, 18th DECEMBER, 1790.

The Court met.

Present Richard Cartwright, Esq., and Neil McLean, Esq.

Simon J. Cole
vs.
Joseph Allen

The plaintiff demands of the defendant the sum of three pounds currency for a ton hay.

The Court having heard the parties, it appears that the hay in question was cut on land sold to the defendant by the plaintiff the 15th day of July last, but by a writing produced by the plaintiff signed by the defendant bearing date the same day, it appears that three months was allowed the plaintiff to redeem this land, which in reality converts the sale into a mortgage, and preserves to the plaintiff the property of the hay and corn growing thereon.

The Court do therefore order that the plaintiff shall have the hay cut on the land in question, and that the defendant do pay the costs of suit amounting to twelve shillings.

Cole
vs.
Carnahan.

Joseph Carnahan appears in court and prays that the cause between him and Simon J. Cole given against him by default may be reheard.

It appears that said Carnahan did use his endeavour to attend on Saturday last agreeable to the summons, and actually came to town soon after the breaking up of the Court, and that he has evidence to produce in his behalf; it is ordered that the judgment given on the 11th inst. be suspended and this cause be heard on the 10th day of February next at Adolphus Town, in the Circuit Court.

The Court adjourn to Saturday the 22nd January next.

SATURDAY, 22nd JANUARY, 1791.

The Court met.

Present: Richard Cartwright, Esq., and Neil McLean, Esq.

No business.

The Court adjourns to Saturday next.

SATURDAY, 29th JANUARY, 1791.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Neil McLean, and Hector McLean, Esquires.

The plaintiff demands of the defendant the sum of five pounds currency for damages for unlawfully detaining his property.

James Connor
vs.
David Betton.

The Court having heard the parties, it does not appear that the plaintiff has any just grounds for complaint against the defendant, therefore order this cause to be dismissed, and that the plaintiff do pay costs.

The Court adjourns to next Saturday.

SATURDAY, 5th FEBRUARY, 1791.

The Court met pursuant to adjournment.

Present: Neil McLean, Esq.

No business.

The Court adjourned to Saturday, the twenty-sixth inst.

SATURDAY, 26th FEBRUARY, 1791.

Present: Richard Cartwright, Esq., and Neil McLean, Esq.

The plaintiff demands of the defendant the sum of one pound and threepence currency due on his promissory note and amount of account.

Charles Bennett
vs.
Mathew Dies.

The defendant appears and prays orgn. of the note, which appears to be dated the twelfth day of March, in the year one thousand seven hundred and eighty-one, and the defendant saith that no demand has been since made for the payment of the said note and pleads the Statute of Limitations.

The defendant acknowledged the account amounting to three shillings and sixpence.

Therefore the Court do order and adjudge that the plaintiff shall recover the sum of three shillings and sixpence, with costs taxed at eleven shillings and twopence.

SATURDAY, 5th MARCH, 1791.

Present: Richard Cartwright, Esq., and Hector McLean, Esq.

No business.

SATURDAY, 12th MARCH.

The Court met.

Present: Richard Cartwright, Esq., and Neil McLean, Esq.

Alex'r Simpson
vs.
Elisha Phillips.

The plaintiff demands of the defendant the sum of one pound, due for amount of account. The defendant being duly called made default.

The plaintiff produced his account against the defendant, and having made oath to the same, the Court do consider that the plaintiff shall recover of the defendant the sum of one pound for his debt and fifteen shillings and twopence costs.

Alex'r Simpson
vs.
Ruloff & John
Vandican.

The plaintiff demands of the defendants the sum of four pounds currency due for their promissory note.

The said defendants being duly called made default.

The plaintiff exhibits and filed defendants' promissory note, bearing date the twenty-eighth day of August, 1790, for the sum of four pounds.

The Court do consider that the plaintiff shall recover of the defendant the said sum of four pounds for his debt and fourteen shillings and sixpence for costs.

Alex'r Simpson
vs.
Jno. Dec'y Gill.

The plaintiff demands of the defendant the sum of one pound, four shillings and sixpence, for amount of account.

The defendant being duly called made default.

The Court being well satisfied that the defendant could not attend for his present bad state of health do order that the cause may be tried the 2nd April.

SATURDAY, 2nd APRIL, 1791.

Present: Richard Cartwright, Esq., and Neil McLean, Esq.

The plaintiff demands of the defendant the sum of two pounds currency due for damages for grain and straw, let him, and not yet returned.

George Harper
vs.
John Holmes.

The parties not being fully prepared for trial, have mutually agreed that the matter in dispute may be submitted to the award of Capt. Jno. Everett, and that the said award may be given into this Court in writing on Saturday, the 23rd inst.

The Court adjourned to Saturday, the 16th inst.

SATURDAY, 16th APRIL, 1791.

Present: Neil McLean, Esq.

The plaintiff demands of the defendant the sum of six pounds, five shillings, due for his promissory note.

Peter Clark
vs.
Stephen Brown.

The defendant made default.

The plaintiff prays that judgment may be given on Saturday next.

The Court adjourned to Saturday, the twenty-third inst.

SATURDAY, 23rd APRIL, 1791.

Present: Richard Cartwright, Esq., and Neil McLean, Esq.

The plaintiff demands of this defendant the sum of one pound, seventeen shillings and tenpence currency due for his note.

Charles Lilly
vs.
Philip P. Lansing.

The defendant being called made default, and the plaintiff having exhibited and filed the plaintiff's note,

The Court having considered the default and likewise the note filed, the Court do order that the plaintiff shall recover the sum of one pound, seventeen shillings and tenpence with costs taxed at eleven shillings and twopence.

The plaintiff having filed the defendant's note,

The Court do consider that the plaintiff shall recover of the defendant the sum of six pounds, five shillings for said note, with eleven shillings and twopence costs.

Peter Clark
vs.
Stephen Brown.
(From last
Saturday.)

The Court adjourns to Saturday next.

SATURDAY, 30th APRIL, 1791.

Present: Richard Cartwright, Esq., and Neil McLean, Esq.

Wm. Muir
vs.
Chrs. Georgeon.

The plaintiff demands of the defendant the sum of ten pounds currency for damages sustained in breach of agreement.

The defendant prays time until Saturday next.

The Court do order that this cause be tried on Saturday next.

Adjourned to Saturday next.

SATURDAY, 7th MAY, 1791.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Esq., and Neil McLean, Esq.

William Mieur
vs.
Christ'r Georgeon.
(From last
Saturday.)

The plaintiff appears in person.

The defendant also appears in person.

The Court having heard the parties, likewise the evidence in this cause, it appears that the plaintiff was to furnish the defendant with a pair of horses this spring for the purpose of improving the plaintiff's land, and that the defendant having demanded the said horses of the plaintiff the plaintiff refused delivering the same according to agreement, by which the plaintiff has suffered damages to the amount of five shillings.

The Court therefore do order and adjudge that the defendant shall pay the same, with costs taxed at eleven shillings and twopence.

The Court adjourn to Saturday next.

SATURDAY, 14th MAY, 1791.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Esq., and Neil McLean, Esq.

Titus Simons
vs.
Will'm Sherriff.

The plaintiff demands of the defendant the sum of three pounds, eighteen shillings currency, for his promissory note.

The defendant being duly called made default.

The plaintiff produced the said notes.

The Court having considered the same, likewise the default of the defendant, do order and adjudge that the plaintiff shall recover of the defendant the sum of three pounds, eighteen shillings for the said notes, and likewise eleven shillings and twopence costs.

SATURDAY, THE 21st MAY, 1791.

Present: Richard Cartwright and Neil McLean, Esquires.

No business.

SATURDAY, THE 28th MAY, 1791.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., Esq., and Neil McLean, Esq.

The plaintiff appears in person and demands of the defendant the sum of ten pounds, one shilling currency, due for amount of account.

The defendant appears in person and prays that time may be allowed him to procure his evidence.

The Court do order that this cause may be tried next Saturday.

Phillip P Lansingh
vs.
Willet Casey.

The plaintiff appears in person and demands of the defendant the sum of two pounds, four shillings and three-pence currency, for amount of account.

The parties do mutually agree that the matter in dispute shall be referred to the judgment of Daniel Wright, Esq., to determine, and that his award may be given in writing in the space of three weeks from this date.

The Court do order that the matter in dispute may be determined as prayed.

Edward Hicks
vs.
John Quigely.

The plaintiff demands of the defendant the sum of five pounds currency, due for part of a certain sum awarded to him for damages sustained in breach of agreement.

The Court having fully heard the parties, likewise having examined the bond filed by the plaintiff and the award given in writing by the arbitrators, will take time to deliberate further in this cause, and that judgment will be given on Saturday next.

The Court adjourns to Saturday next.

William Mieur
vs.
Christopher Georgen.

SATURDAY, 4th JUNE, 1791.

Present: Richard Cartwright, Jun., Esq., and Neil McLean, Esq.

The Court having fully heard the parties, likewise the evidence in this cause, it appears that the defendant is indebted to the plaintiff the sum of three pounds, six shillings and tenpence currency; the Court, therefore, order that the plaintiff shall recover the same, with costs taxed at twelve shillings and twopence.

Phillip P.
Lansingh
vs.
Willet Casey.
(From last term.)

William Mieur
vs.
Christopher
Georgeon.
(From last term.)

The Court having duly deliberated on the merits of this cause do consider that the plaintiff shall recover of the defendant the sum of five pounds currency in part of the sum awarded him by the arbitrators mutually chosen and appointed by the parties, with costs taxed at eleven shillings and twopence.

The Court adjourns to Saturday next.

SATURDAY, JUNE 11th.

The Court met.

Present: Richard Cartwright and Neil McLean, Esquires.

No business.

The Court adjourned until Saturday next.

SATURDAY, 18th JUNE.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., Esq., and Neil McLean, Esq.

No business.

SATURDAY, 25th JUNE, 1791.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., Esq., and Neil McLean, Esq.

Henry Smith
vs.
Joseph Allen.

The plaintiff demands of the defendant the sum of five pounds currency for damages sustained in working his mare without leave. The parties do mutually agree that the matter in dispute between them shall be determined by Daniel Wright.

The Court do therefore order that this action may be determined as prayed, and that his award shall be given in writing before the last day of July next.

SATURDAY, 6th AUGUST, 1791.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., Esq., and Neil McLean, Esq.

John & Ruloff
Vandecan
vs.
Alex'r Simpson.

The plaintiff demands of the defendant the sum of four pounds, four shillings and ninepence currency, for amount of account.

The defendant being duly called made default.

The plaintiff filed his said account to which he made oath, likewise filed the defendant's note for the balance charged on said account.

The Court therefore order that the plaintiff shall recover of the defendant the said sum of four pounds, four shillings and ninepence for his debt, and fourteen shillings and sixpence.

The plaintiff demands of the defendant the sum of ten pounds, seven shillings, due for amount of account.

The defendant appears in person and objects to the two first charges in the said account.

The defendant, not being prepared with his evidence, prays that this cause may be ordered for next Saturday.

Ordered accordingly.

Charles Lilly
vs.
John Cumming.

The plaintiff demands of the defendant the sum of ten pounds currency, for damages for breach of promise.

The defendant appears in person and prays time until next Saturday to procure his evidence.

Ordered accordingly, as prayed.

Charles Lilly
vs.
John Cumming.

The plaintiff demands of the defendant the sum of five pounds, ten shillings currency, due for amount of account.

The Court having fully heard the parties, likewise the evidence in this cause, are not prepared to give judgment in this cause, therefore will take time to deliberate.

John Cumming
vs.
Charles Lilly.

The plaintiff demands of the defendant the sum of seventeen shillings and eightpence currency for his note.

The defendant being duly called made default.

The Court having examined the said note and considered the default of the defendant to adjudge that the plaintiff shall recover of the defendant the sum of seventeen shillings and eightpence, with eleven shillings and twopence costs.

Adjourned to Saturday next.

Richard Campbell
vs.
Alex'r McDonell.

SATURDAY, 13th AUGUST, 1791.

Present: Richard Cartwright and Neil McLean.

In allowing to each party the charges, either unobjected to by the other or supported by evidence, there appears due to Mr. Lilly four pounds currency, exclusive of the twelve shillings for the gammon, to be accounted for by Mr. Cummings, and as the suit brought by Mr. Cummings was perfectly unnecessary as his account would have been equally allowed without it, it is considered that

Lilly
vs.
Cummings
and
Cummings
vs.
Lilly.
(From last
Saturday.)

the said Cummings shall pay the said Lilly the aforesaid sum of four pounds, and defray the costs of the two actions, taxed at twenty-seven shillings and fourpence.

Charles Lilly
vs.
John Cumming.
(From Saturday
last.)

For action of damages.

The Court having fully heard the parties, likewise the evidence in this cause, will take time to deliberate and give judgment next Saturday.

Agnes Taylor
vs.
Ebenezer
Washburn.

The plaintiff demands of the defendant the sum of seven pounds, five shillings currency, due for his promissory note and filed the said note.

The Court having fully heard the parties will give judgment on Saturday, the 27th inst.

James Clark, Jun.,
vs.
Daniel McMullan.

The plaintiff demands of the defendant the sum of one pound, two shillings and twopence currency for his promissory note.

The defendant made default.

The Court do consider that the plaintiff shall recover the sum of one pound, two shillings and twopence for his note, and twelve shillings and sixpence costs.

Thomas Tinbrook
vs.
James Kemp.

The plaintiff appears and demands of the defendant the sum of ten pounds currency for damages. The plaintiff also appears and prays that this cause be dismissed as the said James Kemp is not indebted to him, and that John Kemp, Sen., is the person he intended to summon.

The Court do order that the defendant be dismissed, with five shillings costs.

Thomas Tinbrook
vs.
Martin Snook.

The plaintiff demands of the defendant the sum of nine pounds currency for amount of account.

The Court having fully heard the parties, likewise the evidence in this cause, it does not appear that the plaintiff has any ground for an action against the defendant. The Court therefore order that the defendant be dismissed, and that the plaintiff pay costs taxed at one pound and elevenpence.

Peter Clark
vs.
Willet Casey.

The plaintiff demands of the defendant the sum of ten pounds, ten shillings and fourpence currency for amount of account.

The defendant being duly called made default.

Mr. Robins appears for the defendant and presented an application to have this cause adjourned until next Saturday.

The Court do order that it may be heard as prayed.

The Court adjourn to Saturday next.

SATURDAY, 20th AUGUST, 1791.

Present: Neil McLean, Esq.

In action for damages.

The Court having duly deliberated on the merits of this cause do consider that the plaintiff shall recover of the defendant the sum of two pounds, fifteen shillings for his damages and costs of suit, taxed at twenty-four shillings and twopence.

Charles Lilly
vs.
Jno. Cumming.

The plaintiff demands of the defendant the sum of ten pounds currency for damages, in non-performance of his written obligation.

Christopher
Georgen
vs.
William Muir.

By consent of the plaintiff this cause is ordered for Saturday next.

The plaintiff demands of the defendant the sum of nine shillings for his note and account.

Peter Clark
vs.
Peter Woodcock.

The defendant made default.

The Court having considered the default of the defendant and examined the several exhibits filed do order that the plaintiff shall recover the sum of nine shillings for his account and costs taxed at twelve shillings and tenpence (12s. 10d.).

The plaintiff demands of the defendant the sum of ten pounds, ten shillings and fourpence currency, due for amount of account.

Peter Clark
vs.
Willet Casey.

The Court having fully heard the parties, likewise examined the several exhibits filed in this cause, will take time to deliberate and give judgment on Saturday next.

The Court adjourned until Saturday, the twenty-seventh inst.

SATURDAY, 27th AUGUST, 1791.

The Court met pursuant to adjournment.

Present: The Honourables Richard Cartwright, Jun., Esq., and Neil McLean, Esq.

The Court having duly considered the merits of this cause, likewise examined the several exhibits filed, do adjudge that the plaintiff shall recover of the defendant the sum of nine pounds, sixteen shillings and sixpence currency, with costs taxed at twelve shillings and twopence.

Peter Clark
vs.
Willet Casey.
(From last
Saturday.)

Christopher
Georgen
vs.
William Muir.
(From Saturday
last.)

The plaintiff appears in person.

The defendant also appears in person.

The Court having fully heard the parties, likewise examined the several exhibits filed, will take time to deliberate and give judgment in this cause on Saturday next.

Alexander Simpson
vs.
William Cadman.

The plaintiff demands of the defendant the sum of four pounds, five shillings and elevenpence.

By consent of parties the Court do order that the matter in dispute may be examined and determined by Gilbert Sharp and Alexander Clark, and that their award shall be ready to be given to the parties in writing on Saturday, the tenth day of September next.

Thomas Sparham
vs.
John Thorn.

The plaintiff demands of the defendant the sum of three pounds currency, due for a canoe, lent the defendant and returned.

The plaintiff prays time until next Saturday to produce his evidence.

The Court do order that this cause may be tried as prayed.

Agnes Taylor
vs.
Ebenezer Wash-
burn.
(From Saturday,
the 13th instant.)

The plaintiff appears in person and prays that judgment may be given in this cause.

The defendant appears by Titus Simons and prays that the land may be conveyed to the defendant as stated in his note.

The Court do order that this cause may be fully heard and determined on Saturday, the 10th inst.

John McLeod
vs.
Frans. Roshleau.

The plaintiff demands of the defendant the sum of nine pounds currency for damages in the non-performance of an agreement.

The Court having fully heard the parties, will deliberate and give judgment on Saturday next.

Peter Clark
vs.
George Campbell.

The plaintiff demands of the defendant the sum of nine pounds, ten shillings and fourpence, due for his promissory note.

The defendant being duly called made default.

The plaintiff having filed the said note, and the Court having examined the same, likewise considered the default of the defendant, do order and adjudge that the plaintiff shall recover of the defendant the said sum of nine pounds, ten shillings and fourpence, with costs eleven shillings and twopence.

Peter Clark
vs.
Jno. Howell.

The plaintiff demands of the defendant the sum of ten pounds, four shillings and sevenpence currency, due for his several promissory notes.

The defendant being duly called made default.

The plaintiff having filed the said notes the Court have examined the same, and considered the default of the defendant the sum of ten pounds, four shillings and sevenpence, with costs taxed at fourteen shillings and twopence.

The plaintiff demands of the defendant the sum of two pounds, seven shillings and fivepence, due for his note.

The defendant being duly called made default.

The Court having examined the said notes and considered the default of the defendant, do order that the plaintiff may recover the sum of two pounds, seven shillings and fivepence, with costs twelve shillings and eightpence currency.

The plaintiff demands of the defendant the sum of eight pounds, four shillings and twopence currency, for amount of account.

On motion of the plaintiff the Court do order that this cause may be tried on Saturday, the tenth day of September next.

The plaintiff demands of the defendant the sum of one pound, fifteen shillings and sixpence currency, due for amount of account.

The defendant does not appear. On motion of the plaintiff the Court do order that this cause may be tried on Saturday, the tenth day of September next.

The plaintiff demands of the defendant the sum of one pound, six shillings and fourpence, due for account.

The defendant does not appear.

On motion of the plaintiff the Court do order that this cause may be tried on the 10th September next.

Adjourned until Saturday next.

SATURDAY, 3rd SEPTEMBER, 1791.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., and Neil McLean, Esquires.

All differences and claims between the parties having been submitted to arbitration, the judgment previously obtained by the defendant against the plaintiff is hereby included.

The Court do therefore consider that the plaintiff shall recover of the defendant the sum of twenty-one shillings

Peter Clark
vs.
Jno. Connor.

Peter Clark
vs.
John Trompou.

Peter Clark
vs.
Simon J. Coles.

Peter Clark
vs.
Joseph Carnahan.

Georgeon
vs.
Muir.
(From Saturday last.)

and twopence for damages and costs of suit, taxed at eleven shillings and twopence.

Costs paid by the defendant.

Peter Clark
vs.
Richard Ferguson.

The plaintiff demands of the defendant the sum of four pounds, five shillings and one penny currency, due for his promissory note.

The defendant being duly called made default.

The Court having duly examined the said promissory note filed by the plaintiff and considered the default of the defendant, do order and adjudge that the plaintiff shall recover of the defendant the sum of four pounds, five shillings and one penny for his debt, and twelve shillings and sixpence costs.

Thom's. Sparham
vs.
John Thorn.
(From Saturday last.)

The Court having fully heard the parties, likewise the evidence in this cause, do consider that the plaintiff shall recover of the defendant the sum of one pound, fifteen shillings for his canoe and chain, and costs taxed at fourteen shillings and twopence.

Debt and costs paid in court.

John Edgar
vs.
John Connor.

The plaintiff demands of the defendant the sum of five pounds, ten shillings currency, due for amount of account.

The parties having filed their several accounts, the Court will take time to examine the same, and do order that the parties may appear the first Saturday in the month of October next.

Edward Hicks
vs.
John Vogely.
(From Saturday, 20th May, last.)

Peter Clark appears for the plaintiff and filed the award of Daniel Wright, Esq., in this cause, dated the eleventh day of June, and prays the Court to give judgment.

The Court having duly examined the said award do consider that the plaintiff shall recover of the said defendant the sum of one pound, seven shillings and tenpence currency, with costs at taxed at twelve shillings and twopence.

Adjourned until Saturday next.

SATURDAY, 10th SEPTEMBER, 1791.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., and Neil McLean, Esquires.

Joseph Allen
vs.
Michel Criderman.

The plaintiff demands of the defendant the sum of five pounds currency, due for amount of account.

The Court having heard the parties, it appears that the defendant is indebted to the plaintiff the sum of two pounds, eight shillings and twopence. It is therefore considered that the plaintiff shall recover of defendant the sum of two pounds, eight shillings and twopence currency, with costs taxed at eleven shillings and twopence.

The plaintiff demands of the defendant the sum of five pounds currency, due for amount of account.

The Court having heard the parties it appears that the defendant is justly indebted to the plaintiff the sum of one pound, six shillings and threepence, and the defendant acknowledges the same. It is therefore considered that the plaintiff shall recover of the defendant the said sum with eleven shillings and twopence costs.

The plaintiff demands of the defendant the sum of ten pounds currency, due for amount of account.

The defendant was duly called and made default.

The plaintiff made oath that he has duly served a true copy of the original summons on the defendant.

The Court having duly examined the several exhibits filed by the plaintiff, and the plaintiff having been duly sworn to answer the Court relative to his demand against the defendant, it is considered that the plaintiff shall recover of the defendant the sum of seven pounds, nine shillings for his debt, and thirteen shillings and twopence costs.

The plaintiff demands of the defendant the sum of seven pounds, ten shillings currency, due for his promissory notes.

The defendant being called did not appear.

It appears by the evidence of Timothy Prindle that the defendant could not attend, being sick.

The Court do therefore order that this cause may be tried on Saturday, the first day of October next.

The plaintiff demands of the defendant the sum of fifteen shillings currency, due for detaining a bear skin, the property of the plaintiff.

The Court having fully heard the parties, it does not appear that the plaintiff has any cause of action against the defendant, therefore consider that the plaintiff shall pay costs, taxed at eleven shillings and twopence.

Peter Clark appears for the defendant and informs the Court by writing from the arbitrators in this cause, that one of the said arbitrators is sick and not able to do any

Joseph Allen
vs.
Tim'y Prindle.

Joseph Allen
vs.
Joseph Carnahan.

Joseph Allen
vs.
John Curnard.

Michel Conlin
vs.
Charles Ouillette.

Alex'r Simpson
vs.
William Cadman.
(From Saturday,
27th August, last.)

business, therefore prays that time may be allowed them until Saturday, the first of October next, to give in their award.

The Court do order that time may be allowed as prayed.

Peter Clark
vs.
John Trompou.
(From 27th
August last.)

The plaintiff appears in person and filed the defendant's written obligation for the sum demanded in this declaration, likewise a copy of the notice of trial duly certified, and prays that judgment may be given in this cause.

The defendant being duly called made default.

The Court having observed the several exhibits filed in this cause do consider that the plaintiff shall recover of the defendant the sum of eight pounds, four shillings and two-pence for his debt, and sixteen shillings costs.

Peter Clark
vs.
Gasper Bower.

The plaintiff demands of the defendant the sum of six pounds, five shillings due for his promissory note, bearing date the first June last, and filed this said note.

The defendant being duly called made default.

The Court having duly examined the said note filed by the plaintiff do consider that the plaintiff shall recover of the defendant the sum of six pounds, five shillings currency, due for said note, and fifteen shillings and two-pence costs.

Adjourned until Saturday, first of October next.

(Memo.—Account of fees carried to account dated the 30th September.)

SATURDAY, 1st OCTOBER, 1791.

The Court met pursuant to adjournment.

Present: The three Judges.

John Edgar
vs.
John Connor.
(From Saturday
last.)

The plaintiff appears in person. The defendant also appears in person.

The Court having fully heard the parties, it appears that the defendant is indebted to the plaintiff the sum of two pounds currency. The Court do therefore consider that the plaintiff shall recover the same, with costs taxed at

James Clark, Jun.,
vs.
Amos Ainsley.

The plaintiff demands of the defendant the sum of six pounds, seven shillings and tenpence currency, due for his promissory note with interest, and the said note and account was filed.

The defendant being duly called made default.

The Court having examined the said exhibits filed, do consider that the plaintiff shall recover of the defendant the sum of six pounds, seven shillings and tenpence currency for said note, and costs taxed at twelve shillings and tenpence.

Adjourned until Saturday next.

SATURDAY, 8th OCTOBER, 1791.

Present: Richard Cartwright and Neil McLean.
Esquires.

The plaintiff demands of the defendant the sum of five pounds, ten shillings, due for amount of account.

The defendant being called made default.

The plaintiff is not prepared to satisfy the Court that the defendant is indebted to him in manner as set forth in his declaration. It is therefore considered that this action be dismissed, and that the plaintiff do pay costs taxed at eleven shillings and twopence.

The Court adjourned to Saturday next.

Timothy Prindle
vs.
Joseph Allen,
curator to the
estate of Pat^k
Kelly, deceased.

SATURDAY, 15th OCTOBER, 1791.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., Neil McLean, and Hector McLean, Esquires.

The plaintiff appears by Mr. McKay and demands of the defendant the sum of two pounds, six shillings and threepence, due for his promissory note.

The defendant being duly called made default.

The Court having examined the said note filed, it is considered that the plaintiff shall recover of the defendant the said sum of two pounds, six shillings and threepence currency, with costs taxed at seventeen shillings and twopence.

Alex^r Clark
vs.
Jacob Carpenter.

The plaintiff demands of the defendant the sum of seven pounds, five shillings and threepence currency, due for balance of account.

The Court having fully heard the parties, likewise the evidence on this cause, it is considered that the plaintiff has no ground of action against the defendant as stated in his declaration, therefore order that the defendant be dismissed and that the plaintiff pay costs, taxed at twelve shillings and twopence.

Elijah Grooms
vs.
Peter Clark.

SATURDAY, THE 22nd OCTOBER, 1791.

Present: Richard Cartwright, Jun., and Neil McLean, Esquires.

No business.

The Clerk being unwell, the Sheriff attended for him, by permission.

SATURDAY, 29th OCTOBER, 1791.

Present: The Honourables R. Cartwright and Neil McLean, Esquires.

James Clark
vs.
Peter Losson.

The plaintiff demands of the defendant the sum of one pound, eleven shillings and fivepence halfpenny, Halifax currency, due for amount of account and interest.

James Clark, Jun., appears as attorney for the plaintiff, the defendant being duly called does not appear, and there being sufficient proof on oath that he hath been duly summoned, the Court having examined the plaintiff's demand, do consider that he do recover the aforesaid sum of one pound, eleven shillings and fivepence halfpenny, with costs of suit taxed at thirteen shillings and tenpence.

James Clark
vs.
Thomas Dempsey.

The plaintiff demands of the defendant the sum of one pound, nine shillings and fourpence halfpenny, Halifax currency, due for amount of an account with interest thereon calculated.

James Clarke, Jun., appears as attorney for the plaintiff, the defendant being duly called does not appear, and there being due proof on affidavit that the summons was regularly served, the Court having examined the plaintiff's demand, do consider that he do recover of the defendant the sum of one pound, seven shillings and ninepence, with costs of suit taxed at thirteen shillings and tenpence.

James Clark
vs.
Johann Lott.

The plaintiff demands of the defendant the sum of one pound, fourteen shillings and sixpence currency, due for damages in the non-payment of wheat.

James Clarke, Jun., appears as attorney for the plaintiff, the defendant being called, Leonard Soper appears and files power of attorney, and says that no proceedings ought to be had in this cause, the summons being served on a Sunday, which, appearing by the oath of said Soper to be in fact the case, the Court do consider that the suit be dismissed with costs.

The defendant before the rising of the Court appears and informs the Court that it was not in his power to appear earlier, having been disappointed in crossing the ferry; it is therefore considered that this cause be reheard. The defendant produced against the plaintiff an account for work to amount of one pound, eleven shillings and sixpence and attests thereto, and there appearing to be nothing due to the plaintiff by the defendant it is considered that the suit be dismissed with costs.

James Clarke
vs.
Peter Lawson.

The plaintiff demands of the defendant the sum of one pound, eighteen shillings and sixpence currency, due for balance of account and interest.

James Clarke
vs.
Leonard Soper.

James Clarke, Jun., appears on behalf of the plaintiff, the defendant appears in person, and says that he received 440 lbs. flour as stated in the account, but that this was given him in payment of an order of Robert Clarke, Esq., for two pounds, fifteen shillings, which order expressed that said sum should be paid in flour, and that he is not indebted to the plaintiff; and the plaintiff not having any proof to sustain his demand, it is considered that this suit be dismissed.

The Court adjourned till Saturday next.

SATURDAY, THE 5th NOVEMBER, 1791.

Present: The Honourables Richard Cartwright, Jun., and Neil McLean, Esquires.

No business.

The Court adjourn till Saturday next.

SATURDAY, 12th NOVEMBER, 1791.

Present: Richard Cartwright, Jun., and Neil McLean, Esquires.

No business.

Adjourned to Saturday next.

SATURDAY, 19th NOVEMBER, 1791.

Present: Richard Cartwright, Jun., and Neil McLean, Esquires.

No business.

Adjourned to Saturday next.

SATURDAY, 26th NOVEMBER, 1791.

- Present: The Honourable Richard Cartwright, Jun., Esq.

No business.

Adjourned to Saturday next.

SATURDAY, 3rd DECEMBER, 1791.

Present: Richard Cartwright, Jun., Esq.

No business.

Adjourned to Saturday next.

SATURDAY, 10th DECEMBER, 1791.

Present: The Honourable Richard Cartwright, Jun., Esq.

No business.

Adjourned to Saturday next.

SATURDAY, THE 17th DECEMBER, 1791.

Present: The Honourable Hector McLean, Esq.

Richard Cartwright, Jun.,
vs.
Archibald Thomson and
John Ferguson.

The plaintiff complains of the defendant for taking away a cupboard or beaufet, from a dwelling-house, his property, and of which the said Archibald Thomson was tenant, without the knowledge or permission of him, the said plaintiff; whereby he hath sustained damage to the value of ten pounds currency.

On motion of the defendant it is ordered that this cause be tried on Saturday next, and that the parties shall then appear in this court.

Adjourned to Saturday next, the 24th inst.

SATURDAY, 24th DECEMBER, 1791.

Present: The Honourable Hector McLean, Esq.

Richard Cartwright, Jun.,
vs.
Archibald Thomson and John Ferguson.
(From last adjournment.)

The plaintiff appears in person. Archibald Thomson also appears for himself and John Ferguson and filed warrant of attorney.

The parties having this day been fully heard in this cause, it is considered that the plaintiff do recover of the defendants the sum of ten pounds currency for his dam-

ages, and cost of suit taxed at thirteen shillings and twopence.

Adjourned to Saturday, 21st January, 1792.

DISTRICT OF MECKLENBURG, KINGSTON.

COURT OF C. P.

SATURDAY, THE 21st JANUARY, 1792.

The Court met pursuant to adjournment.

Present: The Honourables Richard Cartwright, Jun.,
Esq.

No business.

Adjourned to Saturday next.

SATURDAY, THE 20th JANUARY, 1792.

Present: Richard Cartwright, Jun., and Neil McLean,
Esquires.

No business.

SATURDAY, 11th FEBRUARY, 1792.

Present: Richard Cartwright, Jun., and Neil McLean,
Esquires.

The plaintiff demands of the defendant the sum of ten pounds, nine shillings and eightpence currency, due for promissory note.

Stephen Burrett
vs.
Rich'd Ferguson.

Ichobad Hawley appears for the plaintiff by power of attorney duly authenticated; the defendant being duly called made default. The said Ic. Hawley produced the defendant's note payable to Alexander Schut or order, bearing date the 26th day of July, 1787, endorsed by the said Schut and Griggs. It therefore appearing to the Court that the defendant has been duly summoned, and they well-knowing the defendant's signature, they do order that the plaintiff do recover the aforesaid sum, with costs taxed at nineteen shillings and twopence.

SATURDAY, 25th FEBRUARY, 1792.

Present: The Honourables Richard Cartwright, Jun.,
and Neil McLean, Esquires.

The plaintiff appears in person and demands of the defendant the sum of one pound currency, for damages sustained by the plaintiff's not receiving wheat according to agreement.

Joseph Pritchard
vs.
William Lounsberry.

The defendant was called and does not appear.

The plaintiff produces the defendant's note for two bushels wheat, dated the 15th October, 1790. It is considered by the Court that the plaintiff shall recover of the defendant the sum of fifteen shillings for his debt and with costs taxed at one pound four shillings.

Alexander Simpson
vs.
David Palmer.

The plaintiff appears in person and demands of the defendant the sum of eight pounds, three shillings currency, due for amount of account.

The defendant also appears in person.

The Court having fully heard the parties, likewise their respective evidence, it appears that the defendant is justly indebted to the plaintiff the sum of four pounds, ten shillings. It is therefore considered that the plaintiff shall recover of the defendant the said sum of four pounds, ten shillings for his debt, with one pound three shillings and twopence costs.

Adjourned to Saturday next.

SATURDAY, THE 3rd MARCH, 1792.

Present: Richard Cartwright and Neil McLean, Esquires.

John Connor, of Marysburg, yeoman, having filed a complaint against the Clerk of this court for overcharges of fees, and the judges having duly inquired into the same, are of opinion that the said complaint is groundless.

SATURDAY, THE 10th OF MARCH, 1792.

Present: The Honourable Richard Cartwright, Jun., Esq.

John Armstrong
vs.
John Mabery.

The plaintiff demands of the defendant the sum of five pounds, three shillings and eightpence currency, due for his promissory note.

The defendant does not appear.

The plaintiff appears in person and produced a note signed by the defendant, but having neglected to bring the necessary proofs.....

It is ordered that the action be dismissed with costs, taxed at ten shillings and twopence.

Solomon Ball
vs.
John Howard, Jun.

The plaintiff appears in person and demands of the defendant the sum of three pounds, seven shillings currency. The defendant being called does not appear.

Upon examining the summons issued in this cause it appears that the same is not signed by any of the judges, it is considered that no proceedings can be had thereon, the Court therefore order the suit to be dismissed with costs.

Adjourned until Saturday the 7th of April next.

SATURDAY, THE 7th DAY OF APRIL, 1792.

The Court met pursuant to adjournment.

Present: The Honourables Richard Cartwright, Jun., and Neil McLean, Esquires.

The plaintiff appears in person and filed award of Nicholas Hagerman and Paul Tompson, arbitrators, mutually chosen by the parties and appointed by the Court to determine this cause, and the said plaintiff prays that the Court will give judgment thereon.

It is ordered by the Court that the defendant may appear in this court on Saturday next, and show cause, if any he hath, why judgment should not be given on the said award.

The plaintiff appears in person and demands of the defendant the sum of two pounds, ten shillings, due for hay, sold and delivered him at different times.

The defendant was duly called and does not appear.

On motion of the Court it is ordered that this cause may be tried on Saturday, the twenty-first day of April inst.

Adjourned to Saturday next.

SATURDAY, THE 14th DAY OF APRIL, 1792.

The Court met.

Present: The Honourables Richard Cartwright, Jun., and Neil McLean, Esquires.

The plaintiff appears in person and filed copy of notice served on the defendant.

The defendant also appears in person and saith that he has no money or property in his hands belonging to the said estate wherewith to satisfy the said award, and exhibits several accounts to prove it.

The Court having examined the several exhibits produced by the defendant, it appears that the said defendant has sold three hundred acres of land, of which there is

Timothy Prindle
vs.
Joseph Allen,
curator to the
estate of Pat'k
Kelly, deceased.

Jacob Dimond
vs.
Thomas Richardson.

Timothy Prindle
vs.
Joseph Allen,
curator to the
estate of Pat'k
Kelly.
(From Saturday
last.)

about fifteen or twenty acres improved, for the sum of twelve pounds, seven shillings and sixpence, and that the defendant was the purchaser, the Court do not consider that the sale of the said land was regular or legal, and that the said sum is not near the real value, and are of opinion that the defendant has sufficient property in his hands to satisfy the said award. They do therefore order and adjudge that the plaintiff shall recover of the defendant the sum of three pounds, nineteen shillings and ninepence for the said award, together with one pound, fifteen shillings costs.

Barnabas Day
vs.
Solomon Orser.

The plaintiff appears in person and demands of the defendant the sum of one pound, seven shillings and twopence, due for amount of account.

The Court having fully heard the parties, it is considered that the plaintiff shall recover of the defendant the sum of nine shillings and eightpence for his debt, and twelve shillings and tenpence costs.

Amos Ainley
vs.
Archibald
Fairfield.

The plaintiff appears in person and demands of the defendant the sum of six pounds, five shillings and tenpence currency, due for amount of account.

By consent of parties it is ordered that the matter in dispute shall be submitted to the determination of James Robins and Joseph Forsyth, arbitrators between the said parties, and their award may be ready to be delivered in writing in fourteen days hence.

Adjourned to Saturday next.

SATURDAY, THE 21st APRIL, 1792.

The Court met.

Present: Richard Cartwright, Jun., and Neil McLean, Esquires.

No business.

Adjourned to Saturday next.

SATURDAY, THE 28th APRIL, 1792.

Present: The Honourables Richard Cartwright, Jun., and Neil McLean, Esquires.

Robert Askew
vs.
John Edgar.

The plaintiff appears in person and demands of the defendant the sum of two pounds currency, due for amount of account.

By consent of parties it is ordered that this action may be tried on Saturday next.

The plaintiff appears in person and informs the Court that whereas he did obtain an order of this Court to have this action determined by Daniel Wright, Esq., by consent of parties, and the said D. Wright being unwell the matter yet remains yet undetermined, the plaintiff therefore prays that the defendant may be ordered to appear in this Court on Saturday, the 12th day of May next, and show cause, if any he hath, why this cause should not be further proceeded in according to law.

It is ordered that the defendant may appear as prayed.

Hen'y Smith
vs.
Joseph Allen.

The plaintiff appears and says that the persons named as arbitrators in this cause have declined proceeding thereon, therefore prays the Court to give judgment.

Amos Ainsley
vs.
Arch'd Fairfield.
(From the 14th
inst.)

Part of the plaintiff's claim being for seducing or enticing away his dog, the Court consider as improperly classed with matters of account, and therefore take no cognizance of the matter in the present suit; another item of the plaintiff's demand is for damage in abusing his kitchen by putting horses therein, though he was allowed only the use of it for cooking, etc., but as the plaintiff brings no proof of any actual damage, the Court cannot presume any, and as striking out of this article brings the plaintiff's demand below what he acknowledges himself to be the just demand of the defendant against him, the Court therefore dismiss the suit.

The plaintiff appears in person and demands of the defendant the sum of one pound, twelve shillings and sevenpence halfpenny currency, due for amount of account.

The defendant was called and does not appear.

Christopher
Georgen
vs.
Guysbaet Sharp.

The plaintiff having filed his account and duly attested the same it is considered that the plaintiff shall recover of the defendant the sum of one pound, twelve shillings and sevenpence halfpenny for his debt, and seventeen shillings and twopence costs.

Adjourned to Saturday next.

SATURDAY, THE 5th MAY, 1792.

The Court met pursuant to adjournment.

Present: The Honourables Richard Cartwright, Jun., and Neil McLean, Esquires.

No business.

Adjourned until Saturday next.

SATURDAY, 12th MAY, 1792.

Present: Richard Cartwright, Jun., and Neil McLean, Esquires.

Edward Hicks
vs.
William Crawford,
curator of the
estate of W. R.
Crawford.

The plaintiff appears in person and demands of the defendant the sum of one pound, three shillings and fourpence currency for amount of account.

The defendant was called and made default.

On motion of the plaintiff it is ordered that this cause may be tried on Saturday, the twenty-sixth instant.

Joseph Forsyth
vs.
Moses Simmon.

The plaintiff appears in person and demands of the defendant the sum of six pounds, six shillings and twopence halfpenny, due for amount of account.

The defendant was called and does not appear.

The plaintiff filed and attested his account against the defendant for the said sum of six pounds, six shillings and twopence halfpenny currency, it is therefore considered that the plaintiff shall recover of the defendant the said sum, with costs taxed at nineteen shillings and twopence.

Peter Clark
vs.
David Hogan.

The plaintiff demands of the defendant the sum of eighteen shillings and elevenpence currency, due for his order on Joseph Allen.

The Court having fully heard the parties, it appears that the said order on Joseph Allen is payable to John Connor and not transferable, it is therefore considered that the plaintiff hath no grounds for action against the defendant.

Adjourned until Saturday next.

SATURDAY, 19th MAY, 1792.

Present: Richard Cartwright, Jun., and Neil McLean, Esquires.

Robert Kerr
vs.
Henry Younge,
Jun.

John Ferguson appears for the plaintiff and filed a general power of attorney from this plaintiff, and demands of the defendant the sum of three pounds, one shilling and threepence, due for his promissory note.

The defendant was called and made default.

The plaintiff filed the defendant's note for the sum aforesaid, and prays time until next Saturday to procure evidence to prove the authenticity of said note.

John Ferguson appears for the plaintiff and demands of the said defendant the sum of one pound, four shillings and ninepence currency, due for his promissory note.

The defendant was called and made default.

The plaintiff produced and filed the said note, and prays time until next Saturday to prove the authenticity of the same.

Ordered that the plaintiff may be allowed time as prayed.

Robert Kerr
vs.
Andrew Rickley.

The plaintiff appears in person and demands of the defendant the sum of nine shillings and ninepence currency, due for amount of account.

The defendant was called and made default.

The plaintiff produces of the said account and proof of the same being due, it is therefore considered that the plaintiff shall recover of the defendant the sum of nine shillings and ninepence currency for his said account, and twelve shillings and twopence costs.

Adjourned to Saturday next.

John Dubury
vs.
William Bone.

SATURDAY, 26th MAY, 1792.

Present: The Honourables Richard Cartwright, Jun., and Neil McLean, Esquires.

The plaintiff appears and prays that this cause may be ordered for trial on Saturday, the ninth day of June next.

Ordered accordingly.

Kerr
vs.
Young.

John Ferguson appears for the plaintiff and demands of the defendant the sum of two pounds currency, due for this order on Messrs. Macaulay and Markland, unpaid.

John Connor appears for the defendant and prays that the cause may be ordered for trial on Saturday next.

It is ordered accordingly.

Robert Kerr, Esq.,
vs.
Daniel McMullan.

The plaintiff appears in person.

The defendant also appears in person, pursuant to rule of Court of Saturday, the twelfth instant.

The Court having fully heard the parties, likewise the evidence for the plaintiff, and it does not appear that the defendant is indebted to the plaintiff, therefore order that this cause shall be dismissed with costs.

Adjourned to Saturday next.

Edward Hicks
vs.
William Crawford,
curator to the
estate of
W. R. Crawford.
(From the 12th
inst.)

SATURDAY, THE 2nd JUNE, 1792.

Present: The Honourables Richard Cartwright, Jun.,
and Neil McLean, Esquires.

No business.

Adjourned till Saturday next.

SATURDAY, THE 9th DAY OF JUNE, 1792.

The Court met pursuant to adjournment.

Present: The Honourables Richard Cartwright, Jun.,
and Neil McLean, Esquires.

Robert Kerr
vs.
Daniel McMullan.
(From the 26th
May.)

The plaintiff appears and filed the defendant's order for the sum demanded in his declaration.

The defendant was called and does not appear.

The Court do therefore consider that the plaintiff shall recover of the defendant the sum of two pounds, with costs taxed at eleven shillings and twopence.

Solomon Orser
vs.
Barnabas Day.

The plaintiff appears in person and demands of the defendant the sum of nineteen shillings and sixpence due for amount of account.

The defendant also appears in person and saith that he is not indebted to the plaintiff.

It appears to the Court that the plaintiff hath not any ground of action, it is therefore considered that the defendant be dismissed.

John Kinlaid
vs.
Samuel Thomson.

The plaintiff appears in person and demands of the defendant the sum of ten pounds, two shillings and sixpence currency, due for amount of account.

Richard Cartwright, Sen., appears for the defendant and produces his warrant of attorney.

The Court having fully heard the parties, likewise examined James Latham and Thomas Sparham, Esquires, surgeons, upon oath, respecting the value of medicine charged in the account produced by the plaintiff, and the Court not being prepared to give their judgment will take time to deliberate.

Adjourned until Saturday next.

SATURDAY, THE 16th JUNE, 1792.

The Court met.

Present: The Honourables Richard Cartwright, Jun.,
and Neil McLean, Esquires.

The plaintiff demands of the defendant the sum of ten pounds, Halifax currency, or to return to him, the said plaintiff, a bull he, the defendant, unjustly detains from him.

The Court having fully heard the parties, likewise their respective evidence, it appears that the plaintiff hath no just grounds of action against the defendant, it is therefore considered that the defendant be dismissed.

William Schockensee was sworn in the above action, and declared that the defendant told him that the Honourable Judge Cartwright had advised him to detain the said bull until he was fully paid the damages sustained. The Honourable Judge declined giving any opinion in this cause.

The Court having considered the argument of the parties, likewise the evidence in this cause,

It is considered that the plaintiff shall recover of the defendant the sum of four pounds, with costs.

James Clark, Sen.,
late of Kingston,
by his attorney,
Jas. Clark, Jun.,
plaintiff,
vs.
Mich'l Grass,
defendant.

John Kinlaid
vs.
Sam'l Thomson.
(From last
Saturday.)

The plaintiff demands of the defendant the sum of five pounds currency, due for damages sustained for a breach of agreement.

The Court having fully heard the parties, it does not appear that the plaintiff hath sustained any damage as set forth in his declaration. It is therefore considered that the defendant be dismissed.

Adjourned till Saturday next.

John Connor
vs.
John MacBean.

SATURDAY, THE 23rd JUNE, 1792.

The Court met.

Present: The Honourables Richard Cartwright, Jun., and Neil McLean, Esquires.

The plaintiff appears in person and demands of the defendant the sum of eight pounds currency, five pounds for a breach of agreement, and three pounds for damages and evidence charge.

The defendant appears in person and prays time may be allowed to produce his evidence.

By consent of parties it is ordered that the matter in dispute shall be heard and determined by William Harrison, Jun., and Donald McIntosh, and that their award may be ready to be delivered in writing in fourteen days from this date, and provided the said arbitrators shall not agree upon before that time the matter shall then be determined by an umpire chosen by the said arbitrators.

Adjourned to Saturday next.

John MacBean
vs.
John Connor.

SATURDAY, THE 25th AUGUST, 1792.

The Court met.

Present: The Honourables Neil McLean and Hector McLean, Esquires.

No business.

The Court adjourned until Saturday next.

SATURDAY, 1st SEPTEMBER, 1792.

The Court met pursuant to adjournment.

Present: Richard Cartwright, Jun., and Neil McLean, Esquires.

No business.

The Court adjourned till Saturday, the 15th instant.

SATURDAY, THE 15th SEPTEMBER, 1792.

The Court met.

Present: The Honourable Neil McLean, Esq.

Thomas Dorland
vs.
James Bradshaw

The plaintiff appears in person and demands of the defendant the sum of eight pounds, ten shillings, with interest, for sundry merchandises delivered him.

The defendant made default.

On motion of the plaintiff it is ordered that this cause be tried on the first Saturday in the month of October next.

Thomas Dorland
vs.
Simon Snyder.

The plaintiff appears in person and demands of the defendant the sum of seven pounds, eleven shillings and one penny halfpenny, due to the plaintiff, for so much awarded him by the arbitration of Hazleton Spencer and Peter Vanalstine, arbitrators mutually chosen by the said parties.

The defendant being duly called made default.

The plaintiff having produced the said award, duly subscribed by the arbitrators aforesaid, and no objections being made to the legality thereof, it is considered that the plaintiff shall recover of the defendant the sum of seven pounds, eleven shillings and one penny halfpenny for said award, together with costs of suit taxed at

Allen Patterson
vs.
Jacob Sypis.

The plaintiff appears by Thomas Markland, his attorney, and demands of the defendant the sum of two pounds currency, due for merchandise.

The plaintiff, not having his evidence present, prays to withdraw the suit, which is dismissed accordingly, with costs taxed at eleven shillings and twopence.

Adjourned until Saturday, the sixth day of October next.

SATURDAY, 6th OCTOBER, 1792.

The Court met pursuant to adjournment.

Present: The Honourable Neil McLean, Esq.

No business.

Adjourned until Saturday next.

SATURDAY, 13th OCTOBER, 1792.

The Court met.

Present: The Honourable Neil McLean, Esquire.

No business.

Adjourned until Saturday next, the twentieth instant.

SATURDAY, 20th OCTOBER, 1792.

Present: Richard Cartwright, Jun., and Neil McLean, Esquires.

The plaintiff appears in person and demands of the defendant the sum of thirteen shillings and sixpence, due for a book account.

Barnabas Day
vs.
Paul Trompour.

On petition from the defendant, it is ordered that this cause may be tried on Saturday, the tenth of November next.

The plaintiff appears in person and demands of the defendant the sum of sixteen shillings and fourpence, due for amount of account.

Barnabas Day
vs.
Joseph Allen.

The defendant being duly called made default.

The plaintiff having attested the said account, it is considered that he shall recover of the defendant the sum of sixteen shillings and fourpence for his debt, and one pound, five shillings and twopence for costs.

Adjourned until Saturday next.

SATURDAY, 27th OCTOBER, 1792.

The Court met.

Present: The Honourables Richard Cartwright, Jun., and Neil McLean, Esquires.

Barnabas Day
vs.
Joseph Conklin.

The plaintiff appears in person and demands of the defendant the sum of one pound, three shillings and sixpence for a book account.

On petition from the defendant, it is ordered that this cause may be tried on Saturday, the 10th November next.

Titus Simons
vs.
John Howard.

The plaintiff appears in person and demands of the defendant the sum of five pounds currency, due for a certain written obligation unpaid.

The defendant being duly called made default.

The plaintiff produced an order drawn by the defendant on Peter Vanalstine, but there being no proof to the signature of the said order, it is considered that the suit be dismissed with costs, taxed at sixteen shillings and twopence.

The Court adjourned until Saturday, the tenth of November.

SATURDAY, 10th NOVEMBER, 1792.

Barnabas Day
vs.
Paul Trompour.
(From 20th
October.)

The plaintiff appears in person.

The defendant also appears in person.

The Court having fully heard the parties, it is considered that the plaintiff shall recover of the defendant the sum of thirteen shillings and sixpence, with costs taxed at twenty-one shillings and twopence.

Barnabas Day
vs.
Joseph Conklin.
(From 27th
October.)

The plaintiff appears in person, and the defendant being called made default.

The plaintiff having produced the defendant's note for the sum demanded in his declaration, it is considered that the plaintiff shall recover of the defendant the sum of one pound, three shillings and sixpence for said note, together with one pound, two shillings and twopence costs.

Adjourned until Saturday next.

SATURDAY, 17th NOVEMBER, 1792.

The Court met.

Present: The Honourables Richard Cartwright, Jun., and Neil McLean.

No business.

Adjourned until Saturday next.

SATURDAY, 24th NOVEMBER, 1792.

The Court met.

Present: Richard Cartwright, Jun., and Neil McLean, Esquires.

No business.

Adjourned until Saturday, 8th December, next.

SATURDAY, 14th DECEMBER, 1792.

Present: R. Cartwright, Jun., and Neil McLean, Esquires.

No business.

Adjourned to Saturday, 22nd inst.

SATURDAY, 22nd DECEMBER, 1792.

The Court met pursuant to adjournment.

Present: The Honourables R. Cartwright, Jun., and Neil McLean, Esquires.

The plaintiff appears in person and demands of the defendant the sum of eighteen shillings currency, due for nine bushels of oats, sold and delivered him.

Solomon Orser
vs.
Hector McLean,
Esq.

The plaintiff also appears in person.

The Court having fully heard the parties it appears that the said oats were the property of Seth Stephen, deceased, and that the said plaintiff hath no right or title to sue for the same; the Court therefore consider that this action be dismissed with costs, taxed at

DISTRICT OF LUNEBURG: COURT OF COMMON PLEAS.

Justices' Commission of the Court of Common Pleas for the District of Lunenburg.

Dorchester, G.

George the Third, by the grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth. To our trusty and well beloved Richard Duncan, Edward Jessup, and Alexander McDonell, Esquires, and to all whom these presents shall come to or may concern. Greeting. Know ye that we have taken into our Royal Consideration the loyalty, integrity, and ability of you, the said Richard Duncan, Edward Jessup, and Alexander McDonell. And of Our special grace, certain knowledge and meer motion, have assigned, constituted and appointed, and by these presents do assign, constitute and appoint you, the said Richard Duncan, Our first Justice, and the said Edward Jessup Our second Justice, and you, the said

Alexander McDonell, Our third Justice of Our Court of Common Pleas, of and in Our District of Luneburg, in Our Province of Quebec. Giving and by these presents granting unto you the authorities and powers in the said district to the offices and places of the Justice and Justices of the Common Pleas of any District of Our said Province belonging, and to proceed in the exercise thereof at such times, places, and terms, and in such course and manner as hath been heretofore directed for the Districts of Quebec and Montreal, or either of them, and as may be found necessary or most conducive to the ease and convenience of the inhabitants of the said District of Luneburg, and according to the laws of our said Province. To have, hold, exercise and enjoy the said several offices of Justices of Our said Court of Common Pleas to you respectively, for and during Our pleasure, and your residence, within Our said District of Luneburg respectively; together with all and singular the rights, profits, privileges, and emoluments, which unto the office respectively belong and appertain, or of right ought to belong and appertain. In Testimony whereof, We have caused these Our Letters to be made patent and the Great Seal of Our said Province of Quebec to be thereunto affixed, and the same to be recorded in one of the Books of Patents, in our Registers Office of Enrollment of Our said Province remaining. Witness Our Trusty and Well-beloved Guy Lord Dorchester, Our Captain General and Governor in Chief of Our said Province, at our Castle of Saint Lewis, in Our City of Quebec, this twenty-fourth day of July, in the year of Our Lord, one thousand seven hundred and eighty-eight, and of Our Reign the twenty-eighth.

(Signed)

D. G.

Geo. Pownall, Sec.

Dorchester, G.

George the Third, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth. To Jacob Farrand, Esquire, and to all whom these Our present Letters shall come to or may concern. Greeting. Know ye, that reposing trust and confidence in the loyalty, integrity and ability of you, the said Jacob Farrand, of Our special grace, certain knowledge and meer motion, We have assigned, constituted, and appointed, and by these presents do assign, constitute and appoint you, the said Jacob Farrand, to be Clerk of Our Court of Common Pleas for the District of Luneburg. And also Clerk of the Peace and of Our Sessions of the Peace for the said District of Luneburg,

in Our Province of Quebec. To have, hold, exercise and enjoy the said offices and places of Clerk of Our said Court of Common Pleas and Clerk of the Peace, and of Our Sessions of the Peace for and during Our pleasure and your residence within Our said District; together with all and singular the rights, profits, privileges, and emoluments, which unto the said offices and places, or either of them, belong and appertain, or of right ought to belong and appertain. In testimony whereof We have caused these Our Letters to be made patent, and the Great Seal of Our said Province of Quebec to be thereunto affixed, and the same to be recorded in one of the Books of Patents in Our Registers Office of Enrollments in Our said Province remaining. Witness Our Trusty and Well-beloved Guy Lord Dorchester, Our Captain General and Governor in Chief of Our said Province, at Our Castle of St. Lewis, in Our City of Quebec, this twenty-fourth day of July, in the year of our Lord one thousand seven hundred and eighty-eight, and of Our Reign the twenty-eighth.

(Signed) D.G.

Geo. Pownall, Sec.

WEDNESDAY, 7th JANUARY, 1789.

COURT OF COMMON PLEAS, for the District of Lunenburg, at Cornwall, 7th January, 1789.

Present: The Honourable Richard Duncan and Alexander McDonell, Esquires.

The Sheriff returned the writ.

The plaintiff appears and filed declaration.

Donald McLeod
vs.
Kenneth McDonell.

The defendant appears and says in his plea, that he did say that the plaintiff had been the cause and means of the death of fifty of His Majesty's loyal subjects, but denies that he said it was during the plaintiff's residence in the City of Albany.

Katherine McGilvray, of Charlottenburg, being duly sworn to give evidence in this cause, saith that she knew the plaintiff in Albany some time after the peace in the year eighty-three, and that he then bore the character of a rebell and would not be trusted by the friends of the Government, and she heard some say that he had deserted from a scout of the British troops, and gave the counter sign to the enemy, in consequence of which they were betrayed.

The plaintiff asked the deponent what reason she had for giving him so bad a character.

Answer.—From her having heard him say that he wished that Great Britain might not succeed in reducing the rebels, and that she might depend upon never seeing her friends that were embarked in the cause of Government.

Question by the Plaintiff: Were there any persons present at the above conversation?

Answer.—There were, but they are not in this country.

Question.—Whether she knew any person who he had betrayed, distressed, or caused to be put in prison?

Answer.—That she heard of none except the scout already mentioned.

(Signed on the minutes.)

Katherine M'Gilvray.

Lieut. Neil McLean, being duly sworn to give evidence in this cause, saith that some time in August or July last the inhabitants of the fourth, fifth, and sixth concessions of the Township of Cornwall were warned to assemble in order to enrol themselves in the Militia, that when assembled several objected to be enrolled. After they were dismissed the plaintiff, Donald McLeod, came to the house of Captain Ranald McDonell, where the defendant, Kenneth McDonell, and some other people were then sitting. He (the deponent) asked the plaintiff what objection he had to be enrolled. He replied that as the rest of the inhabitants thought proper not to enrol themselves he would do as they had done. The defendant (who had enrolled himself) replied: Why should you sign now that never signed for your King or Country before? The plaintiff answered that he done as much service and suffered as much as the defendant had done; the defendant, seemingly in passion, told him no he had not, and that he had been the means of the death of fifty of His Majesty's subjects by betraying them to their enemy; that only one escaped out of that number and he had five wounds. Some time after, the defendant, on being summoned by the plaintiff, requested of the deponent to try and accommodate this matter between him and the plaintiff, as he had no wish to bring him to trouble, which the deponent acquainted the plaintiff of, who seemed inclined to settle the matter, provided the defendant would acknowledge that what he had asserted was false, the deponent recommended to the plaintiff to make up with the defendant, as he would be proved a deserter at best. He (the plaintiff) then

related the manner of his going into the States, which was, that he was taken at Boston along with Colonel Campbell, of the 71st Regt., in which regiment he (the plaintiff) was a soldier; that he was sent farther into the interior parts of the country, where he remained for some time, and afterwards went to Albany; the deponent then asked whether he had ever made any attempt to join the King's Troops, to which he answered that he had not; but that notice was sent to him from New York by some of his comrades to go to his regiment there and take the benefit of the Act of Grace; which he said he did not find convenient to do, having a family, and added that he expected certificates of his character from several people at Albany.

(Signed on the minutes.)

Neil McLean.

Alexander Cameron, of Cornwall, yeoman, being duly sworn to give evidence in this cause, saith that he knew the plaintiff in the year eighty-two at Albany, and lodged two nights in his house; and that he was cautioned by one John McDonell and Donald McGregor not to trust anyone.

Question by Plaintiff: Did you ever know me to be at any publick or private meeting of the Rebels?

Answer: No.

Question: Do you know of yourself, or have you heard from others that I was guilty of the charge laid against me by the defendant?

Answer: Not untill I came to this country.

Question: Do you know me to be a deserter from the British Troops, or that I betrayed any British subject?

Answer.—I do not know that you are a deserter, but have heard some person say (but cannot tell who) that you refused to be exchanged, nor do I know of your betraying any one.

Question, by the Defendant.—Had you any acquaintance with the plaintiff prior to your going to Albany in the year 1781?

Answer.—No.

(Signed on the minutes.)

Peter McArther, of Charlottenburg, yeoman, being duly sworn to give evidence in this, saith that he knew the plaintiff for two years in Albany, and that he knew no harm of him, only that he was called a disaffected

person to Government; but agrees with the other part of Cameron evidence.

(Signed on the Minutes.)

Peter McArther.

John Cameron, of Cornwall, yeoman, being duly sworn to give evidence in this cause, saith that he had seen the plaintiff frequently in Albany, and that he did not know of himself, or hear any things from others, to the prejudice of the plaintiff's character.

(Signed on the Minutes.)

John Cameron.

Duncan McArther, of Charlottenburg, yeoman, being duly sworn to give evidence in this cause, saith that he knew the plaintiff in the years 1781 and 1782, and that he was then looked upon as a disaffected person by the friend to Government.

(Signed on the Minutes.)

Duncan McArther.

The Court adjourned till to-morrow at ten o'clock in the forenoon.

THURSDAY, 8th JANUARY, 1789.

The Court met pursuant to adjournment.

Present: The same Judges.

Donald McLeod
vs.
Kenneth McDonell.

The parties being present, the Court deliver judgment, viz.:

The evidence in this cause being closed, the Court having seen the declaration, and having examined the witnesses, and fully heard the parties respectively in their own behalf, are of opinion from the defendant's confession in his plea, corroborated and confirmed by the evidence of Lieut. Neil McLean, that the defendant is guilty of the defamation alledged against him by the plaintiff, therefore do order and adjudge that the defendant do pay to the plaintiff the sum of one shilling for his damages, together with costs of suit.

Court adjourned till next term.

(Signed on the Minutes.)

Richard Duncan, }
Alex. McDonell, } Judges.

THURSDAY, 22nd JANUARY, 1789.

COURT OF COMMON PLEAS, at Edwardsburg, on
Thursday, the 22nd day of January, 1789.

Present: The Honorable Richard Duncan and Alexr.
McDonell, Esquires.

The Sheriff returned the writ.

The plaintiff appears and filed declaration.

Conradt Peterson
vs.
Jonathan Wick-
wire.

The defendant appears, and for his plea says that he was put in possession of a lot of land (No. 6, in front of Elizabethtown), now claimed by the plaintiff in his declaration, two years ago, by order of Captain Sherwood, and that he has continued upon said lot and made considerable improvement on it since that time; but that he had not at any time a *Ticket* for the said lot, which was given to him in lieu of lot No. 16, 1st Concession of Augusta, which lot (No. 16) was drawn by the defendant at the time of drawing for the lots in that township and was given to another person in his absence.

Plaintiff replies, that in July, 1784, he received a warrant from Captain Sheerwood for lot No. 6, in front in Elizabethtown, on which he made some improvement, and having gone to the States to see his friend and relation, where he found his father involved in debt, and he staid to assist him for the space of four years for the purpose of extricating him from his difficulties, and when he returned to this country he found the defendant in possession of his said lot of land, who claimed it by virtue of authority of Captain Sheerwood, and further that he (the plaintiff) has disposed of his lot, and is under the penalty of two hundred pounds to deliver a good and sufficient deed to the purchaser for the same.

Captain Sheerwood, being duly sworn to give evidence in this cause, saith that about the time specified by the plaintiff in his replication he did give a warrant to the plaintiff for one half of the lot now in question, which is now in possession of the defendant, and that the west half of the said lot is possessed by one Donald Macachrin, and that the plaintiff and defendant are the original joint proprietors of the said lot (No. 6). Captain Sheerwood further says that he also gave the plaintiff the lot in the second concession adjoining in the rear to the lot in question, but from the plaintiff's long absence

he had forgot it, and has since given it to one—Ephriam
Airs.

(Signed on the Minutes.)

Justus Sheerwood.

The Court are of opinion that from the peculiar situation of the parties in this cause, and to prevent the establishing a precedent in causes of this nature that judgment should be suspended, and do therefore suspend their judgment till the opinion of the Chief Justice can be known.

Ashel Ward
vs.
Heacaint Chenier.

The Sheriff returned the writ.

The plaintiff appears and filed declaration.

Doctor Solomon Jones appears for the defendant, and does certify to the Court that the defendant is not able to appear, being confined by sickness, and prays that this trial may be put off till next Term.

The Court grants the above prayer and order that the parties do appear before this Court on the thirtieth day of March next.

Court adjourned till to-morrow, 9 o'clock in the forenoon.

FRIDAY, 23rd JANUARY, 1789.

Court met pursuant to adjournment.

Present: Same Judges.

Joachim Denault
vs.
John McInaulty
and Mich'l Conroy.

The Sheriff returned the writ.

The plaintiff appears and says for his declaration that he was at the Bay of Quinty on the 22nd of November, 1789, where he found Mr. Long, who said he was in a poor situation, and not able to pay a debt which he owed to the plaintiff, therefore desired the plaintiff to pay the two men at Toniata any legal debts that they (the defendants) demanded for their time while they were in his (Mr. Long's) service (which accordingly was paid, by the hands of Mr. Ephriam Jones, to the amount of twenty-five dollars), and what remained of the effects belonging to Mr. Long, he desired the plaintiff to take in payment for the debt he owed him, which amounted to thirty pounds currency. The plaintiff declares that the articles, which should have been delivered to him by virtue of an order from Mr. John Long, and which would have satisfied the debt, were either kept,

sold, embezzled, or squandered away by the defendants. Therefore the plaintiff prays that this trial may come on immediately, and the defendants be condemned to pay the above mentioned sum of thirty pounds, together with costs of suit.

The defendants appear and say they are not guilty any thing as laid in the plaintiff's declaration, and pray the truth to be inquired, and therefore consent that this trial do come on immediately.

Nicholas Kilmore, of Elizabeth Town, Yeoman, being duly sworn to give evidence in this cause, saith that he saw in the possession of the defendants half a box of window glass, many of which were broken, twenty or thirty pairs of hinges, a small bag of vermillion paint, one brush sythe, a common bedstead, one small trunk almost new, two horse bells, and a quantity of shingles, some of which the defendants sold to a Mr. Phillips, of Augusta, and some to one Leonardts, of Elizabethtown; also two spades and one shovel; and a quantity of squared house timber, which lay at Mr. Long's place about three months ago; he likewise saw in the defendants' possession a small box of shot containing about twenty pounds, a small keg containing about three pounds of gunpowder, three horse whips, and two sash window frames with glass in them; most of the above mentioned articles were carried by the deponent from Mr. Long's place to the house of one Armstrong, by request of the defendants, and that he believes there were a number of other articles brought there at the same time, which he cannot specify, and further says that he since saw several of the articles before mentioned at the house of one of the defendants (John McInaltie).

(Signed on the Minutes.)

his
Nicholas X Kilmore.
mark.

Ephriam Jones, of Augusta, Esquire, being duly sworn to give evidence in this cause saith, that the plaintiff intrusted him to settle the affairs of Mr. Long with the defendants, who agreed to have this matter settled by an arbitration, which arbitration accordingly awarded that the defendants should receive from the plaintiff the sum of twenty-five dollars, being in full the amount of their wages.

(Signed on the Minutes.)

Ephriam Jones.

The defendants produce a letter from Mr. Long, viz.:—

John McInaltie and Michael Conroy.

I hereby authorise and give you full power to keep possession of my house and land, with all other edifices and everything else now on the premises, and to prevent any one to claim or enter upon without my writing order bearing date after this time, and this shall be your full security for every part of your conduct in this business.

Two guns, 14,000 shingles, 70 logs, timber squared.

(Signed) John Long.

Dated 25th February, 1787.

The plaintiff filed an order from Mr. Long, to the defendants, for every thing of his (Mr. Long's) then remaining at Toniata—dated 22nd November, 1786.

The Court having heard the declaration of the plaintiff, and having examined the evidence and fully heard each of the parties on their own behalf and also seen the exhibits produced in this cause, are of opinion that things were embezzled and made away with by the defendants, which appears by the evidence of Nicholas Kilmire, therefore do order and adjudge that the articles so embezzled and made away with, shall be paid for by the defendants, agreeable to the appraisement of two appraisers, legally to be appointed, together with costs of the suit.

The appraisers appointed by the Court to appraise the articles embezzled and made away with by the defendants in the cause of Denault against John McInaltie and Michael Conroy, were Captain William Fraser, of Edwardsburg, and William Bewell, of Elizabethtown, Esquire, who accordingly value the articles so embezzled and made away with by the defendants, at the sum of fifteen pounds, thirteen shillings and ninepence currency, of which sum the Court do order and adjudge John McInaltie to pay to the plaintiff, on account of his having taken the article of shingles entirely to himself, the sum of eleven pounds, six shillings and tenpence halfpenny, and Michael Conroy to pay to the plaintiff the sum of four pounds, six shillings and tenpence halfpenny, making together the whole sum fifteen pounds, thirteen shillings, and ninepence currency.

Francois Lorimier
vs.
James Jordan.

The Sheriff returned the writ.

The plaintiff appears and for his declaration says that in the month of June now last past he agreed with the defendant to undertake and make a good and suffi-

cient set of running geers, after the English manner, for a saw mill, without stop or delay from the time of the agreement, for which work the defendant was not to receive payment till it should be finished. The defendant worked thirty days, for which the plaintiff paid him in part, though contrary to agreement; the defendant then left his work, and though he was repeatedly requested to complete his engagement, he refused to return and fulfil his agreement, and in consequence of such the defendant's neglect, the plaintiff says he has sustained damages to the amount of seventy pounds currency, including the wages partly paid on account of the thirty days work, which was paid contrary to agreement. Wherefore the plaintiff prays that the defendant may be condemned to pay the said damages, amounting to seventy pounds, with costs of suit, and that this cause may be tried immediately.

The defendant appears and denies that he is in any thing guilty as stated in the plaintiff's declaration, and prays that the truth hereof may be inquired.

The parties mutually agreed to submit their cause to the verdict of jury. The Court therefore order that a jury be summoned to try this cause, and that a venire do issue returnable to-morrow at 10 o'clock in the forenoon.

The Court adjourned till to-morrow at 9 o'clock in the forenoon.

SATURDAY, 24th JANUARY, 1789.

The Court met pursuant to adjournment.

Present: The same Judges.

The Sheriff returned venire and pannel.

Francois Lorimier
vs.
James Jordan.

The jury impannelled and sworn to try the issue joined between the parties, plaintiff and defendant, were:—

Alexr. Humphrys.

William Bewell.

John Dulmage.

David Hunter.

James Humphrys.

William Fraser.

Thos. Fraser.

Peter Drummond.

Joachim Denault.

William Lahigh.

Thos. Boid.

Joseph McNish.

The parties in this cause, for want of some principal evidence, have with mutual consent and the approbation of the Court withdrawn their suit, and submitted the decision thereof to the arbitrament of Daniel Jones and

Justus Sherwood, Esquire, both of Augusta, on the part of the plaintiff, and John Brown, of Augusta, millwright, and Alexander Humphrys, of Augusta, millwright, on the part of the defendant, and if they should be equally divided upon the case they are to call in an umpire, whose award shall be final, and the arbitrators to meet upon this business on the second Tuesday in February next, and to return their award to this Court on the thirtieth day of March following, and the Court order that this rule be served upon the arbitrators that they may meet accordingly.

Joachim Denault
vs.
William Lahigh.

The Sheriff returned the writ.

The plaintiff appears and declares that the defendant is justly indebted to him, by his promissory note of hand passed in the month of May, 1786, in the sum of ten pounds, eighteen shillings and fourpence currency, which said sum still remains unpaid and unsatisfied. Therefore the plaintiff prays that judgment may be given against the defendant for the said sum of ten pounds, eighteen and fourpence currency, with interest, together with costs of suit, and the plaintiff prays that this trial may be ordered to come on immediately.

The defendant appears and acknowledges the debt as it is stated by the plaintiff in his declaration, but pleads inability to pay it.

The Court are of opinion that the defendant is justly indebted to the plaintiff in the sum of ten pounds, eighteen shillings and fourpence, currency, with lawful interest on the said sum from the month of May, 1786, to this day, and do therefore order and adjudge, with the consent of the plaintiff, that the defendant do pay to the plaintiff the full amount of the debt with interest, till this day, at the expiration of three months from this day, together with costs of suit.

TUESDAY, 17th MARCH, 1789.

COURT OF COMMON PLEAS, held at New Johnstown, on Tuesday, the 17th day of March, 1789.

Present: The Honorable Richard Duncan, Alexander McDonell, Esquires.

Josiah Bleakly
vs.
Phillip Cryslar.

The Sheriff returned the writ.

The plaintiff appears and filed declaration, and prays this cause may be tried immediately.

The Court grant the above prayer, and order that this cause do come on directly.

The defendant being duly called does not appear, neither in person or by his agent.

The plaintiff filed the defendant's note of hand for one hundred and nine pounds, seven shillings and sixpence, currency.

The Court having heard the plaintiff's declaration, and having seen the exhibits filed in this cause, are of opinion that the debt demanded by the plaintiff is a just one, and do therefore order and adjudge that the defendant do pay the sum claimed by the plaintiff in his declaration of one hundred and nine pounds, seven shillings and sixpence, Halifax currency, together with costs of suit.

Court.

(Signed, on Minutes.)

Richard Duncan.

Alexr. McDonell.

MONDAY, 30th MARCH, 1789.

COURT OF COMMON PLEAS, held at Edwardsburg, on Monday, the 30th day of March, 1789.

Present: The Honorable Richd. Duncan, Alexr. McDonell, Esquires.

It is the opinion of this Court, from the evidence produced on the part of the plaintiff, as well as from the testimony of his Ticket, that he as original proprietor has the best title to the lot in question, the Court do therefore order and adjudge that the plaintiff be put in possession of the same in the course of one month, from this date, at the same time as it appears to the Court that the defendant has an equitable title to the improvements by him made thereon, during his possession, they therefore order that two appraisers be appointed by the parties to value the same, and that the plaintiff reimburse those improvements so valued either by clearing so much land yearly for the defendant in the same proportion as he cleared on his lot, or by giving an equivalent in money, at the same time allowing the plaintiff for the benefits received by the defendant from the several crops produced upon the said lot during the defendant's possession. The Court also order that the cleared lands in question, as well as the crops now in the ground, shall be in joint copartnership for this year between the parties, and if the appraisers see any particular advantage arising on either side from this mode of division they are to take notice of it, and allow accordingly, and the Court request the

Conradt Peterson
vs.
Jonathan Wick-
wire.

favour of Ephriam Jones, Esquire, to take the trouble of swearing the appraisers who shall be appointed for the aforesaid purpose.

RULE.

Francois Lorimier
vs.
James Jordan.

The parties in this cause having mutually consented by the approbation of the Court held at Edwardsburg on the seventh day of January last to submit the decision of their cause to the arbitrament of Justus Sheerwood, Esquire, Daniel Jones, yeoman, Alexr. Humphrys, and John Brown, millwrights, all of Augusta, and whereas a *Rule* of Court was served upon the said arbitrators directing them to meet upon this business on the second Tuesday of February following, and to return their award into Court on this day; but as it is alledged by the arbitrators that for want of a principal evidence they could not decide upon the matter in dispute between the plaintiff and defendant till that evidence should be present. It is therefore directed by this Court that the above named arbitrators do meet and decide upon the matter now in dispute between the parties at some time and place to be by them appointed betwixt this date and the twenty-fifth day of June next, which decision or award they are to return into Court on Monday, the twentieth day of July next. The Court order this Rule to be served upon the above mentioned arbitrators that they may conduct themselves accordingly.

The Court adjourned till to-morrow at ten o'clock in the forenoon.

TUESDAY, 31st MARCH, 1789.

Court met pursuant to adjournment.

Present: The same Judges.

Justus Sheerwood
vs.
Alex. Humphrys.

The Sheriff returned the capias.

The plaintiff appears and filed declaration.

The defendant appears, and having mutually agreed with the plaintiff to accommodate their differences without bringing it to the issue of a suit, they have therefore consented to the following mode for that purpose (which the Court approve of), viz.: The plaintiff is to furnish wheat for fifteen days' subsistence for the defendant, and to find a man to work with him, during which time the defendant is to complete a saw mill for the plaintiff as heretofore was agreed upon, and to repay the work to be done by the man to be furnished by the plaintiff; and also to give a mortgage in the mean time upon his house and lot, as security to the plaintiff for the true performance of this agreement.

WEDNESDAY, 1st JULY, 1789.

COURT OF COMMON PLEAS, holden at New Johnstown,
on Wednesday, the 1st day of July, 1789.

Present: The Honorable Richard Duncan, Alexander
McDonell, Esquires.

The Sheriff returned the writ.

The plaintiff appears and filed declaration.

Gersham French
vs.
Ziba Phillips.

The defendant appears and says that he is justly indebted to the plaintiff for eighteen bushels of wheat, but objects to the price and damages demanded by the plaintiff in his declaration, and submits the decision of his cause to the judgment of the Court.

With the consent of the parties it is ordered that this trial do come on immediately.

Plaintiff filed two exhibits:

1. Note promissary from defendant to the plaintiff.
2. Letter from the defendant to the plaintiff.

The Court having heard the parties respectively and seen the exhibits filed in this cause, do take time to consider of the judgment.

The Court having maturely considered the case of Gersham French, plaintiff, and Ziba Phillips, defendant, are of opinion that the defendant is justly indebted to the plaintiff in the sum of eighteen pounds, currency, for debt and damages, which sum the defendant is condemned to pay to the plaintiff, with costs of suit.

MONDAY, 20th JULY, 1789.

COURT OF COMMON PLEAS, held at Edwardsburg, on
Monday, the 20th day of July, 1789.

Present: The Honorable Richard Duncan, Alexander
McDonell, Esquires.

The Sheriff returned the writ of attachment.

The plaintiff appears and filed declaration.

The defendant appears, and denies the charge as laid in the plaintiff's declaration.

The parties mutually consent to have this trial come on immediately. It is therefore ordered that the special matter be given in evidence.

Lana Weatherhead, being sworn to give evidence in this cause, saith that she heard the defendant say that

Dorothy Brown
vs.
Heman Landen.

he had slept with the plaintiff, for which reason he would not marry her.

The deponent being asked by the defendant whether she did not hear the plaintiff say that she was glad that the defendant was gone. Answer, she did hear the plaintiff say so, because he had deceived her.

(Signed on the Minutes.)

her
Lana X Weatherhead.
mark.

Rebecca Every, being sworn to give evidence in this cause, saith that the defendant told her in the month of January last that it was on account of the plaintiff that he was going to leave the country, as he expected a constable to be after him very soon, and that he was going into the Colonies, and that he would not return till the next winter.

her
(Signed) Rebecca X Every.
mark.

John Ralston, being sworn to give evidence in this, and being asked whether he had heard the defendant say anything relative to the plaintiff's character, saith that he did not hear the defendant say anything, but had heard several people say that the defendant had reported that the plaintiff was a whore, or words to that signification.

Question 1, by the plaintiff.—Whether the deponent had not heard that a day was appointed for her wedding with the defendant?

Answer.—He did hear Lidia Askin say that a day was appointed for the wedding.

Question 2.—What opinion do you entertain of the plaintiff from her connection with the defendant?

Answer.—That her character is injured by it.

Question 3.—Whether he did not think the plaintiff could have married to advantage, if she had had no connection with the defendant?

Answer.—Yes.

(Signed on the Minutes.)

John Ralston.

Conradt Peterson, being sworn to give evidence in the cause, saith that he lived last winter in the same house with the plaintiff, and that she told him she was to be married to the defendant, and asked him to the wedding, he further says he heard the defendant call the plaintiff

his old woman. The deponent adds that he heard some of the plaintiff's family declare at the time of the funeral of her mother, that they looked upon the defendant as one of their family.

Question by the Court: Have you heard anything to the prejudice of the plaintiff's character from her connection with the defendant?

Answer.—I have heard it said, but cannot tell by whom, that the defendant had said the plaintiff was a whore, and that he was determined to be even with her for some ill treatment, which his brother had received from her.

Shubel Seelye, being sworn to give evidence in this cause, saith that some time last winter he was in company with the defendant, and that the defendant told him he was going to be married to Dorathy Brown (the plaintiff) and that he was going to put up a house, and he also understood that the defendant had obtained his father's consent to marry the plaintiff. Some days after this conversation with the defendant, he saw him passing by, and told him he thought he had been married by that time, the defendant replied that the wedding was put off on account of the death of the plaintiff's mother.

Question by plaintiff.—Whether you do not think her character injured by the reports spread about her, from her connection with the defendant?

Answer.—Yes.

Question, by defendant.—Whether the deponent did not understand from the neighbourhood that the defendant's father's consent to the marriage could not be obtained?

Answer.—He did hear some of the neighbours say that the plaintiff was not qualified to come into his (the defendant's) family.

(Signed on the Minutes.)

Shubel Seelye.

Ashel Hurd, being sworn to give evidence in this suit, saith that about the first day of June now last past he stopped at the house of George Campbell, of Augusta, to get a glass of rum; during the time that he was in the house he saw one Loop lying in bed, and a woman with him, who he supposes to have been the plaintiff; on being interrogated by the Court saith that he cannot be positive as to the woman, but is sure that Loop is the man.

(Signed on the Minutes.)

Ashel Hurd.

Chandler Phillips, being sworn to give evidence in this cause, saith that about the first of June he was at the

house of George Campbell, of Augusta, in company with Ashel Hurd, and agrees with the whole of his evidence.

(Signed on the Minutes.)

Chandler Phillips.

James Jordan, of Augusta, millwright, being sworn to give evidence in this cause, saith that he was in George Campbell's house on the morning that the two foregoing evidences (Ashel Hurd and Chandler Phillips) called there, and that he was the person who was in bed with the said Loop, mentioned in the evidence of Hurd, who he supposed to be the plaintiff.

Question, by plaintiff.—Whether the deponent ever knew from himself, or had heard from any other person, that there was any criminal correspondence, or connection, between her and the said Loop?

Answer.—He did not.

The parties, plaintiff and defendant, in this cause having agreed to proceed no further in this action, and having prayed the Court to discharge it, the Court grants their prayer, and order and adjudge that each party shall pay half the costs that have accrued in this suit.

MONDAY, 12th OCTOBER, 1789.

COURT OF COMMON PLEAS, held at New Johnstown, on Monday, the 12th day of October, 1789.

Present: The Honorable Richard Duncan, Alexander McDonell, Esquires.

Richard Wilkinson
vs.
Phillip Crysler.

The Sheriff returned the writ.

The plaintiff appears and files declaration.

Richard Wilkinson
vs.
David Mecun.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant appears by his agent and acknowledges the debt which the plaintiff demands by his declaration.

The plaintiff filed a note of hand of the defendant.

The Court having heard and considered the defendant's confession of the debt do therefore order and adjudge him to pay the plaintiff the sum demanded in his declaration of thirteen pounds, three shillings and fivepence, Halifax currency, with lawful interest on the said sum from the eleventh day of March, 1789, till the fifth of October, in the same year, the interest amounting to nine shillings and fivepence, making together the sum of thirteen pounds, twelve shillings and ten, currency, and costs of suit.

The Sheriff returned the writ.

The plaintiff appears and filed declaration.

The defendants appear and file plea.

On motion of the defendants, this cause is ordered to be tried by a jury, and that a venire do issue for that purpose, returnable at ten o'clock in the forenoon on Wednesday, the 14th instant.

James Gray, Esq.,
vs.
William Empey,
Jacob Ross and
Matthias Snit-
singer.

The defendant appears and confesses that he is in part indebted to the plaintiff for the sum he demands in his declaration.

Richard Wilkinson
vs.
Phillip Crysler.

The plaintiff filed three pieces, viz.:—

1. A Rule of Court from the Common Pleas at Montreal.

2. A letter from Mr. Powell, Esqr., to the plaintiff.

3. Plaintiff's account against the defendant.

The plaintiff having in his declaration demanded of the defendant the sum of thirty-eight pounds, fourteen shillings halfpenny, currency, for divers goods, wares, and merchandize sold and delivered unto him; and also for costs paid in Montreal heretofore accrued in this action as appears by his account filed, and having also filed a Rule of Court from the Common Pleas in Montreal, by which it appears that the party mutually submitted the investigation and determination of their cause to arbitrators who, accordingly, awarded to the plaintiff his whole account and demand. The Court do therefore order and adjudge that the defendant do pay to the plaintiff the said sum of thirty-eight pounds, fourteen shillings halfpenny, currency, together with costs of suit to be taxed to him.

Court adjourned till Wednesday, at 10 o'clock in the forenoon.

WEDNESDAY, 14th OCTOBER, 1789.

The Court met pursuant to adjournment.

Present: The Honorable Richard Duncan, Alexander Donell, Esquires.

The Sheriff returned the venire.

The jury impanelled and sworn to try the issue in this cause were, viz.:—

James Gray
vs.
Wm. Empey, Jacob
Ross and Matthias
Snitsinger.

- | | |
|-----------------------|------------------------|
| 1. Thomas Swan. | 7. William Coffin. |
| 2. Andrew Wilson. | 8. John Peescod. |
| 3. Robert McGregor. | 9. Alexander Campbell. |
| 4. Richard Wilkinson. | 10. Jacob Vanduzen. |
| 5. John Emerson. | 11. John McNairne. |
| 6. Jeremiah French. | 12. William Key. |

The plaintiff by and in his declaration having complained that the defendants had trespassed on a certain lot belonging to him and lying in the village of New Johnstown; and the ground having been particularized by two evidence (men who cleared the ground for the plaintiff), the jury request the liberty to view the premises, which the Court grants, and the jury retire accordingly.

The jury having viewed the premises returned into Court, and having heard the evidence, and seen the exhibits in this cause, retire to consider their verdict.

The jury, having returned into court, say by Richard Wilkinson, their foreman, that they unanimously find a verdict for the plaintiff, with damages to the amount of ten pounds currency.

The Court having considered the verdict of the jury do confirm the same, and condemn the defendant in costs of suit to be taxed.

TUESDAY, 27th OCTOBER, 1789.

COURT OF COMMON PLEAS, held at Augusta, on Tuesday, the 27th of October, 1789.

Present: The Honorable Richard Duncan, Alexander McDonell, Esquires.

Thomas Knowlton
vs.
Joseph Seelye.

The Sheriff returned the capias.

The plaintiff appears and filed declaration.

The defendant appears and says that he is in nothing guilty as set forth by the plaintiff in his declaration, and prays the truth may be thereof inquired.

The plaintiff filed a penal bond given by the defendant.

On motion for trial, and by request of the parties, it is ordered that this cause be tried by jury, and that a venire do issue, returnable to-morrow at ten o'clock in the forenoon.

Daniel Pattison
vs.
Enoch Mallery.

The Sheriff returned the writ.

The plaintiff appears and filed declaration.

The defendant appears, and denies the charges exhibited against him by the plaintiff's declaration, and prays the truth may be inquired of.

On motion and prayer of the defendant, and with consent of the plaintiff, it is ordered that this cause be put off till next Court of Common Pleas.

The Sheriff return the writ.

The plaintiff appears and filed declaration.

Shubel Seelye
vs.
Daniel Shipman,
Thos. Knowlton.

The defendants appear and deny the charges alledged against them in the plaintiff's declaration, and pray that the truth may be inquired of.

Shubel Seelye
vs.
Daniel Pattison
and Thomas
Knowlton.

On motion and prayer of the defendants, and their representing to the Court the want of a matterial evidence, and with consent of the plaintiff, it is ordered that this cause be adjourned till the next sitting of this court, and then to be tried by a jury.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

John MacNaulty
vs.
Abner Booth.

The defendant appears and denies that he is in any thing indebted to the plaintiff as set forth in his declaration.

The parties mutually pray that this trial may be put off till next Court, because the principal evidence is now absent and cannot appear at this time.

The Court grants the above prayer, and order this cause to be put off accordingly.

The Court adjourned till to-morrow, ten o'clock in the forenoon.

WEDNESDAY, 28th OCTOBER, 1789.

The Court met pursuant to adjournment.

Present: The Honorable Richard Duncan, Alexander McDonell, Esquires.

The Sheriff returned the venire.

The parties appear.

Thomas Knowlton
vs.
Joseph Seelye.

The jury impannelled and sworn to try the issue joined in this cause were:—

- | | |
|------------------------|-----------------------|
| 1. Justus Sherwood. | 7. Ephriam Jones. |
| 2. Thomas Sherwood. | 8. James Campbell. |
| 3. Elijah Bottom. | 9. John Dulmage. |
| 4. Alexander Campbell. | 10. Asa Landen, Senr. |
| 5. Benoni Wilsee. | 11. Caleb Clauson. |
| 6. William Martin. | 12. Samuel Willson. |

The jury being duly sworn to say the truth according to evidence, and having heard the parties and evidence, and having also seen the declaration and plea and other exhibits filed in this cause, and having received the charge from the Court, they retire to consider of their verdict.

The jury having returned into Court say by Justus Sherwood, Esquire, their foreman, that they find a verdict for the plaintiff, viz.:

Unanimously agreed, that Joseph Seelye pay Thomas Knowlton twelve pounds, ten shillings, currency, for debt and damages on the Bond, and lawful interest on the said sum from the eighteenth day of May, 1789, till actual payment.

The Court having considered the verdict of the jury do confirm the same, and condemn the defendant to pay costs of suit, to be taxed.

John McNaulty
vs.
Abner Booth.

The parties in this suit being desirous to refer their cause to the decision of an arbitration, the Court do therefore consent to indulge them, on condition of costs of suit already incurred being paid. The persons appointed for this purpose are Justus Sherwood, of Augusta, Esquire, Thomas Sherwood, of Elizabethtown, Esquire, and Allen Grant, of Elizabethtown, aforesaid, yeoman, by mutual consent of the parties and by approbation of the Court. Witness the parties' hands.

(Signed on the Minutes.)

John MacNaulty, plaintiff.
Abner Booth, Defendant.

It is ordered that this rule be served on the arbitrators, and that their award be made returnable into this Court on the third Tuesday of January, 1790.

Daniel Pattison
vs.
Enoch Mallery.

The parties in this suit being desirous to refer the decision of their cause to an arbitration, the Court do therefore agree to indulge them on condition of costs of suit already incurred being paid. The persons appointed for this purpose by mutual consent of the parties, and by approbation of the Court, are Thomas Sherwood, of Elizabethtown, Esquire, Daniel Jones, of Augusta, gentleman, and Alexander Campbell, of Augusta, aforesaid, gentleman. Witness the parties' hands.

(Signed on the Minutes.)

Daniel Pattison, plaintiff.
Enoch Mallery, defendant.

It is ordered that this rule be served on the arbitrators and their award be made returnable into this Court on the third Tuesday of January, 1790.

MONDAY, 17th MAY, 1790.

COURT OF COMMON PLEAS, held at Augusta, on Monday, the seventeenth day of May, 1790.

Present: The Honourable Richard Duncan, John McDonelle, Esquires.

The parties appear and file an award of arbitration agreeable to a Rule of Court in this cause.

The Court having seen the award do confirm the same.

John McNulty
vs.
Abner Booth.

The parties appear and file an award of arbitration agreeable to a Rule of Court in this cause.

The Court having seen the award do confirm the same.

Daniel Pattison
vs.
Enoch Mallery.

The parties appear and file an award of arbitration agreeable to a Rule of Court in this cause.

The Court having seen the award do confirm the same.

Shubel Seely
vs.
Daniel Shipman.

The Sheriff returned the writ.

The plaintiff appears and files declaration and one exhibit.

Augustain
Lafleche
vs.
Vernil Lorimier.

The defendant appears and acknowledges the charge set forth in the plaintiff's declaration to be in part just, viz., that a contract had been made between the parties in which the plaintiff was to cover three houses for the defendant thirty feet by twenty with shingles, and that the defendant was to provide the plaintiff with nails for that purpose, and also with provision whilst at work at the said houses, and that the defendant was to pay the plaintiff fifteen pounds for the job, but that no time fixed upon when the job should be compleated and that the nails for covering the houses did not come as soon as he expected.

Joseph Bartlet, being sworn to give evidence in this cause, says to the best of his knowledge the plaintiff lost at least one month, in consequence of not being furnished with nails agreeable to contract, after he had made shingles sufficient to cover the three houses; in that time the job might have been compleated, and at last was under the necessity of leaving it for want of the nails.

(Signed on the Minutes.)

his
Joseph X Bartlet.
mark.

The Court having heard the parties respectively on their own behalf and the evidence, and seen the declaration and plea, are of opinion that the defendant is justly indebted to the plaintiff in the sum of fifteen pounds, agreeable to the contract between the parties filed in this cause by the plaintiff, and also in the sum of five pounds, currency, damages sustained by the plaintiff, for non-

performance of agreement on the part of the defendant, which said sums, making together the sum of twenty pounds currency, the Court condemn the defendant to pay to the plaintiff before the last day of July next, and the costs of suit.

Barnard Emery
vs.
Verniel Lorimir.

The Sheriff returned the writ.

The plaintiff appears and files declaration.

The defendant appears and denies the charge as laid against him by the plaintiff's declaration as to damages that an agreement had been made between the plaintiff and defendant nighly as set forth in the declaration, which agreement the plaintiff did in any part fulfil, but left the defendant's employ without giving any notice.

David Fredrick, being sworn to give evidence in this cause, says that he was present when the plaintiff and defendant made an agreement, but cannot pretend to say what the nature of it was, and that he had been employed by the plaintiff several days working at the defendant's house, that there was reason of complaint respecting the provisions given to the workmen as to quantity and and quality.

The Court having heard the parties and evidence in this cause, and having seen the declaration and plea, do order and adjudge this cause to be dismissed with costs to the defendant.

PROVINCE OF QUEBEC, DISTRICT OF LUNEBURG.

1st JUNE, 1790.

At a COURT OF COMMON PLEAS, held at Cornwall, on Tuesday, the first day of June, 1790.

Present: The Honourables Richard Duncan and John McDonell, Esquires.

Nancy Drew
vs.
James Daugherty
and Hannah his
wife.

The Sheriff returns the writ.

The plaintiff appears and files declaration.

The defendants appear and say for their plea that they are in nothing guilty as set forth in the plaintiff's declaration. At the defendants' request the Court order this cause to be tryed by a jury, and that a venire do issue to-morrow morning, at ten o'clock.

Nancy Drew
vs.
David Bruce.

The Sheriff returns the summons.

The plaintiff appears and files declaration.

The defendant appears and says that he is in nothing guilty as set forth in the declaration by the plaintiff.

On motion of the defendant it is ordered that this cause be tryed by a jury to-morrow at ten o'clock in the forenoon, and the special matter be given in evidence at that time.

The Sheriff returns the writ.

The plaintiff appears and files declaration.

The defendant appears and says that he acknowledges that he made use of the expressions as set forth in the plaintiff's declaration. On motion of the defendant it is ordered by the Court that this cause be tryed by a jury to-morrow morning at ten o'clock.

The Sheriff returns the writ.

The plaintiff appears and files declaration.

The defendant appears and says that he did make use of the language as set forth in the plaintiff's declaration, but not with an intention to defame the plaintiff, but merely as a jest, and submits the determination of the cause to the Court.

The Court having seen the declaration, and the defendant having pleaded guilty of the charge brought against him, the Court do therefore condemn the defendant to pay to the plaintiff the sum of two shillings and sixpence damages and costs of suit.

The Sheriff returns the writ of attachment against the defendant's goods and chattels, land, and tenements.

The plaintiff appears by his agent, Mr. John Biekie, of Cornwall, merchant, and saith he is satisfied for the debt that the defendant owed him, therefore the Court do order this action to be discharged, plaintiff to settle the costs that have incurred.

The Sheriff returns the writ of attachment against the defendant's goods and chattels, lands and tenements, and also the summons to appear.

The plaintiff appears by his agent, Mr. John Beikie, of Cornwall, merchant, and saith that he is satisfied for the debt that the defendant owes him.

The Court do therefore order this action to be discharged. Plaintiff to settle the cost that has been already incurred.

Court adjourned till ten o'clock to-morrow morning.

WEDNESDAY, 2nd JUNE, 1790.

The Court have met according to adjournment.

Present: The same Judges.

Nancy Drew
vs.
Stephen Miller.

Peter Bruner
vs.
John Markle.

Rosseter Hoyle
vs.
Farquhers.

Rosseter Hoyle
vs.
Phillip Crysler.

Nancy Drew
vs.
James Daugherty
and wife.

The Sheriff returned the writ venire.

The parties appear.

The jury empaneled and sworn to try the issue in this cause, were:

- | | |
|-------------------|----------------------|
| 1. Giles McBean. | 7. Robert McGrigor. |
| 2. Andrew Wilson. | 8. John Pescod. |
| 3. John Bickie. | 9. Henery Runion. |
| 4. Warffe. | 10. Daniel Campbell. |
| 5. John Loney. | 11. Assel Wright. |
| 6. Jacob Empey. | 12. Nathan Putnam. |

For the plaintiff: Catherine Cline, Donald McGrigor, William Kay, Mrs. William Kay.

For the defendant: Mich'l Cline, Eb'r Anderson.

The jury having heard the parties respectively on their own behalf, and having also heard the evidences produced and seen the declaration and plea, retire to consider of their verdict. The jury having returned into court say by Robert McGrigor, their foreman, a verdict for the defendants, with costs of suit, and so they say unanimously.

The Court having heard the verdict of the jury approve of the same and order it to be recorded accordingly.

Thos. Coffin, Esq.,
vs.
Jacob Cuntryman.

The Sheriff returns the summons.

The plaintiff appears by his agent, Jacob Farrand, Esq., and files declaration.

The defendant appears and accommodates the debt; wherefore the Court orders the defendant to be discharged from this suit.

Nancy Drew
vs.
Stephen Miller.

The Sheriff returns the venire.

Parties appear.

The jury empaneled and sworn to try this issue joined were:

- | | |
|--------------------|----------------------|
| 1. Gilles McBain. | 7. Robert McGrigor. |
| 2. Andrew Wilson. | 8. John Pescod. |
| 3. John Bickie. | 9. Henery Runion. |
| 4. Richard Warffe. | 10. Daniel Campbell. |
| 5. John Loney. | 11. Assel Wright. |
| 6. Jacob Empey. | 12. Nathan Putnam. |

The defendant being ordered to bring forward his evidence in support of his plea offers David Bruce, which plaintiff objects as a party interested in the issue of this suit, which objection the Court admit of as just.

The jury having heard the parties respectively on their own behalfs, and seen the declaration and plea, retire to consider of their verdict. The jury having returned into

court say by their foreman, Robert McGrigor, they find a verdict for the plaintiff of two pounds damages, with half the costs of suit, and so they say all.

The Court approve of the verdict and confirm the same as it is recorded.

The plaintiff prays for an adjournment for the want of a material evidence, viz., the Rev. Mr. John Bryan, who has been subpoenaed for the plaintiff in this suit.

The defendant objects to this prayer being granted, saying that he is now ready for trial.

The Court over-rules this objection and order the trial to be put off till next term, of which the parties are to take notice.

RICHARD DUNCAN and J. McDONALD, *Judges*.

At a COURT OF COMMON PLEAS, held at Osnabruck, the 16th day of September, 1790.

Present: The Honourables Richard Duncan, Edward Jessup, and John McDonell, Esquires.

The father appeared for the plaintiff and prayed that this cause may stand over till next term, the plaintiff being in the Colonies, and her evidence unable to attend on this day.

The defendant appears in person and states that he is ready for trial.

Paul Drew, the father, thereupon prays leave to withdraw the action, which the Court grant on payment of costs.

The Sheriff returns the writ, the parties appear.

The plaintiff appears by Thomas Walker, Esq., her attorney, and prays leave to withdraw her suit, which the Court grants her prayer on payment of costs.

The Sheriff returns the writ.

The parties appear.

T. Walker, Esq., attorney, moves that the defendant do answer.

The defendant appears in person and acknowledges the bargain or agreement for a certain tract of land and has received part payment and the balance remaining due differs twenty shillings or upwards, and that the said balance was never tendered or the deed presented to the defendant to be executed, and thinks that no just cause of action was against him.

Nancy Drew
vs.
David Bruce.

Nancy Drew
vs.
David Bruce.

Elisabeth Loucks
vs.
Hannah Loucks.

Sam'l Adams, Esq.
vs.
Hugh Munro, Esq.

The plaintiff for replycation, by T. Walker, his attorney, saith that the balance was duly tendered to the defendant though thereunto in no wise obliged, that the assertion of the deed not being presented is ill-founded, the defendant having in his own hand-writing prepared a deed which he now files, and which the defendant has hitherto refused to execute, wherefore he prays judgment that the defendant do execute the deed within a certain time limited, plaintiff now offering to pay the balance, which he persists is properly stated in his declaration, and that the defendant be condemned to pay the costs.

The Court having seen the plaintiff's declaration and heard his plea, and also heard the defendant's defence, do order that the defendant execute the deed as prayed for in the plaintiff's declaration and do pay the cost of this suit.

David Su
vs.
Alex'r Campbell.

The Sheriff returns the writ.

The parties appear.

The defendant appears and denies the charges as laid in the declaration.

The plaintiff persists in the conclusion of his declaration, and prays leave to produce his evidence.

The parties pray that William Falkner, Esq., be nominated sole arbitrator to decide this difference, which the Court admit, and he is hereby nominated accordingly. Mr. Falkner returned into court and says that this action be withdrawn, the cost to be equally paid by the parties.

The Court confirm this award and order that this action be dismissed, and the costs to be divided accordingly.

Margaret Piller
vs.
Frederick Markley.

The Sheriff returns the writ.

John Markley, the husband of the plaintiff, appeared in person, confesses satisfaction, prays leave to withdraw this suit, which the Court grant upon payment of costs to this day.

SEPTEMBER 7th.

The Court met agreeable to adjournment.

Present: The same Judges.

William Faulkner,
Esq., curator to
the estate of
Barn's Spencer,
deceased,
vs.
Joseph Brownell.

The Sheriff returned the writ.

Thomas Walker, Esq., attorney for the plaintiff.

The defendant appeared in person and prayed the Court for a reasonable time, not being prepared with counsel.

The Court do order this cause to be put off till next term, and that the defendant do file a plea by the first day of the term.

The Sheriff returned the writ.

Thos. Walker, Esq., attorney, for the plaintiff.

The defendant appears in person and prays the Court for a reasonable time, not being prepared with counsel.

The Court do order this cause to be put off till next term, and that the defendant do file plea by the first day of the term.

George Barnhart
vs.
Abraham Marsh.

The Sheriff returned the writ.

Thomas Walker, Esq., attorney, for the plaintiff.

The defendant appeared in person and prays the Court for a reasonable time, not being prepared with counsel.

The Court do order this cause to be put off till next term, and that the defendant do file plea by the first day of the term.

George Barnhart
vs.
George Johnston.

The Sheriff returned the writ.

Thomas Walker, Esq., attorney, for the plaintiff.

The defendant appeared in person and prays the Court for a reasonable time, not being prepared with counsel.

The Court do order this cause be put off till the next term, and that the defendant do file plea by the first day of the term.

George Barnhart
vs.
James Johnston.

13th JANUARY, 1791.

COURT OF COMMON PLEAS, held at Osnabruck, the 13th day of January, 1791.

Present: The Honourables Richard Duncan and John McDonell, Esquires.

Thos. Walker, Esq., for plaintiff, moves the defendant file his plea agreeable to the rule made in this cause the last day of last term.

James Walker, Esq., for the defendant appears, and prays leave to enter appearance for defendant, which the Court grants, and files his plea accordingly.

Thos. Walker, Esq., for plaintiff, filed replication.

George Barnhart
vs.
George Johnston.

Thomas Walker, Esq., for the plaintiff, moves the defendant file his plea agreeable to a rule made in this cause the last term.

James Walker, Esq., for the defendant, prays leave to enter appearance for the defendant, which the Court grants, and file plea accordingly.

Thos. Walker, Esq., for plaintiff, files replication.

George Barnhart
vs.
James Johnston.

James Walker, Esq., prays leave to enter appearance for defendant, which the Court grants and files plea accordingly.

William Falkner,
Esq., curator, &c.,
vs.
Joseph Brownell.

Mr. James Walker, for defendant, prays that the plaintiff do file his replication to-morrow. Granted.

George Barnhart
vs.
Jeremiah French.

The Sheriff returned summons.
James Walker, Esq., enters appearance and files plea.
Thos. Walker, Esq., files replication.

Lewis Neadoe
vs.
Jno. Ashburn.

The Sheriff returns summons.
The plaintiff appears and declares satisfaction.

John Shell
vs.
Phillip Crisler.

The Sheriff returns the summons.
The defendant being called does not appear and he is defaulted.

John Lake
vs.
John Christie and
Phebe Christie.

The Sheriff returns the summons.
The parties appear and withdraw the suit.
The Court adjourned till to-morrow morning at ten o'clock.

13th JANUARY, 1791.

The Court met agreeable to adjournment of the 13th inst.

Present: The same Judges.

William Falkner,
Esq., curator, &c.,
vs.
Joseph Brownell.

Thos. Walker, Esq., for the plaintiff, entered retraxit, which the Court grant on payment of costs.

The Court adjourned till to-morrow morning at ten o'clock.

15th JANUARY, 1791.

In COURT OF COMMON PLEAS, for the district of Lunenburg, held agreeable to adjournment the 14th January, 1791.

Present: The same Judges.

George Barnhart
vs.
George Johnston.

Thomas Walker, Esq., attorney for the plaintiff, moved that the Sheriff returns the venire.

The Sheriff returns venire.

The jury empaneled and sworn to try the issue of this cause were:

- | | |
|--------------------------|---------------------|
| 1. William Falkner, Esq. | 7. Conrad Devoe. |
| 2. Simeon Covell, Esq. | 8. Phillip Walter. |
| 3. Mich'l Hayns. | 9. Jacob Wager. |
| 4. Henry Markle. | 10. John Stageman. |
| 5. Jacob Markle. | 11. Richard Loucks. |
| 6. George Thompson. | 12. John Loucks. |

Colonel James Gray sworn on the part of the plaintiff.

John Dixson sworn on the part of the plaintiff.

John Helmer sworn on the part of the plaintiff.

Conrad Smith sworn on the part of the plaintiff.

Jeremiah French, Esq., sworn on the part of the plaintiff.

Capt. Samuel Anderson on the part of the plaintiff.

They say by their foreman, William Falkner, Esq., verdict for the defendant, and so they say all.

The Court having heard the verdict of the jury dismiss the action with costs of suit, the parties having agreed by their counsel that judgment be immediately passed.

Thos. Walker, Esq., for the plaintiff enters a retrexit, the Court admits the same on payment of costs. Clerk's fees, £1 4s. 6d.

George Barnhart
vs.
James Johnston.

Thos. Walker, Esq., moves that tryal come to be heard on Thursday next.

Mr. James Walker moves that having concluded to the country that a venire do issue returnable on Tuesday, the Court do order the same.

George Barnhart
vs.
Jerem'h French,
Esq.

18th JANUARY, 1791.

In COURT OF COMMON PLEAS, at Osnabruck, the 18th January, 1791, held according to adjournment the 15th ult.

Present: The same Judges.

J. Walker, attorney for the plaintiff, moves that the Sheriff return the venire returnable this day.

The Sheriff suggests to the Court that on account of the badness of the weather and the distance of the jurors' abode has not admitted of a return.

The Court having considered of the Sheriff's excuse do order that the Court be adjourned till to-morrow at 11 of the clock in the forenoon.

George Barnhart
vs.
Jeremiah French.
Esq.

19th JANUARY, 1791.

In COURT OF COMMON PLEAS, at Osnabruck, the 19th January, 1791, held according to adjournment the 18th ult.

Present: The same Judges.

J. Walker, attorney, prays that the Sheriff show cause why the venire is not returned this day.

The Sheriff returns the venire.

George Barnhart
vs.
Jerem'h French,
Esq.

Mr. Thos. Walker, attorney for the plaintiff, states to the Court that as the venire was returnable yesterday he cannot consent to go into the tryal as to-day, but moves that this cause be continued over till next term, which the Court orders accordingly.

This Court stands adjourned over to the first Monday in June next.

6th JUNE, 1791.

COURT OF COMMON PLEAS, held at Osnabruck, on Monday, the sixth day of June, 1791.

Present: The Honourables Richard Duncan and John McDonell, Esquires.

George Barnhart,
plaintiff,
vs.
Jeremiah French,
Esq., defendant.

The plaintiff appears in court and persists in the conclusion of his declaration.

The defendant appears in person and defines the force and wrong done him, and says that he is not guilty of the premises in manner and form as set forth in the plaintiff's declaration and of this puts himself upon the country, and moves that a venire do issue immediately, which the Court grant, and order the same to be made returnable the 8th inst., to which time the Court stands adjourned.

8th JUNE, 1791.

COURT OF COMMON PLEAS, held at Osnabruck, 8th June, 1791, agreeable to adjournment of the 6th June inst.

Present: The same Judges.

The Sheriff returned venire.

Accordingly the jury was sworn, who are as follows, viz.:

George Barnhart,
plaintiff,
vs.
Jeremiah French,
Esq., defendant.

1. John McKenzie, Esq.
2. Jacob Summors.
3. Richard Wilkinson, Esq.
4. William Kay.
5. Andrew Wilson.
6. John Biekie.
7. Miles McDonell.
8. Thomas Swan.
9. Richard Warffe.
10. Mich'l VanCoughnett.
11. Richard Fountain.
12. Jonas Wood, Sen.

Colonel James Gray sworn on the part of the plaintiff.

Major Arch'd McDonell sworn on the part of the plaintiff.

Captain Neil McLean sworn on the part of the plaintiff.

Captain Ranald McDonell sworn on the part of the plaintiff.

Mr. Eb'r Anderson sworn on the part of the plaintiff.

James McPherson sworn on the part of the plaintiff.

David Wright sworn on the part of the defendant.

Robert McGrigor sworn on the part of the defendant.

Capt. Samuel Anderson, on the part of the defendant.

The jury retire to consider of their verdict in charge of John Pressley, constable.

The jury return into court and say by Richard Wilkin-son, Esq., their foreman, that they find a verdict for de-fendant with costs of suit, which verdict the Court confirm.

Mr. James Walker for plaintiffs.

Mr. Rosseter Hoyle, defendant, enters appearance.

To be continued over till to-morrow.

Messrs. McTavish,
Frobisher & Co.,
vs.
Mr. Rosseter
Hoyle.

Mr. James Walker for plaintiff.

The defendant enters appearance.

To be continued over until to-morrow morning.

J. Walker, Esq., for plaintiff, appears and prays to discontinue his suit, which the Court grant.

Mr. Thomas
Walker
vs.
George Barnhart.

9th JUNE, 1791.

COURT OF COMMON PLEAS, 'held at Osnabruck, on Thursday, the 9th June, as per adjournment of the 8th inst.

Present: The same Judges.

Defendant enters appearance.

Mr. James Walker, attorney for plaintiffs, moves that Mr. John Biekie be heard as prayed for in declaration.

The defendant objects against attachment being granted, and to John Biekie's being examined, as the affidavit made at Montreal by James Hallowell, one of the firm of McTavish, Frobisher & Co., before John Fraser, Esq., one of the Judges of His Majesty's Court of Common Pleas for the District of Montreal, the 3rd inst., is not sufficient to ground a writ of attachment upon, as the affidavit does not contain the words of the ordinance, which are specified therein, to be necessary for granting any at-tachment, as per the Book of Ordinance, chap. 14th, page

Messrs. McTavish,
Frobisher & Com-
pany, plaintiffs,
vs.
Rosseter Hoyle.

43, which are: "and is about to secrete the same, or doth abscond, or doth suddenly intend to depart the Province."

Mr. Walker persists in the prayer of his petition, and prays that Mr. Biekie may be heard, notwithstanding anything to the contrary by the defendant alledged, because he says the present is not an original suit, but an incidental one, arising out of and from the one instituted in the Court of Common Pleas for the District of Montreal; that the ground of their complaint is fully stated in the petition, which is all that was necessary, and that the affidavit is not defective according to law in any point whatever.

The Court order that Mr. Biekie be heard accordingly.

Qt.—Whether he has in his hand possession, or power, any, and what monies, goods, effects, bills, bonds, notes, books, papers, or other securities whatsoever belonging to the estate of the defendant, or to the estate of the late Hoyle & Small.

Ans.—That he has some butter and maple sugar, a few bushels of Indian corn and peas.

Qt.—Do you know if Mr. Hoyle has any property of any kind whatever in this District in the hands, possession, or power, of an person, or persons, whatever?

Ans.—He does not know of any.

Qt.—Do you owe any thing to Mr. Hoyle, and is it by bill, bond, or book debt? To what does the same amount, and when it becomes due?

Ans.—He does owe a book debt, but cannot say how much, and does not know when it becomes due.

Qt.—Does the amount of that debt exceed one hundred pounds, and is it under five hundred?

Ans.—He cannot say whether it be one hundred pounds or more.

Mr. Biekie being heard accordingly, it is adjudged that the property acknowledged by him to be in hands belonging to Mr. Hoyle remain attached, and that he do not dispossess himself thereof, or any part thereof till further orders from this Court.

The Court adjourn till Tuesday, the 27th September next.

27th SEPTEMBER, 1791.

In COURT OF COMMON PLEAS, held at Osnabruck, the 27th September, 1791.

Present: The Honorables Edward Jessup and John McDonell, Esquires.

Thomas Walker, Esq., attorney for plaintiff, prays leave to withdraw the suit, it being settled, which prayer the Court grants.

Messrs. McTavish,
Frobisher & Co.,
vs.
Rosseter Hoyle.

J. Walker, Esq., for plaintiff.

The defendant appears in person, enters for answer, saith that the words set forth in the declaration said to be by him spoken are true and he is able to prove them.

Justus Sherwood,
Esq.,
vs.
Samuel Adams.

The plaintiff appears in person.

The defendant appears and says that he found horses in his garden in the night, and that he did drive them out into the highway and not knowing whose they were.

Jacob Empey
vs.
Nicholas Lang.

Mr. Walker, for plaintiff, filed his replication and moved that a venire do issue returnable on Thursday next.

Justis Sherwood,
Esq.,
vs.
Sam'l Adams.

The defendant appeared in person and say in answer to Mr. Walker's motion for a venire that he is not ready for tryal on account of two of his principal witnesses being absent and out of the Province.

Mr. T. Walker, for plaintiff, in reply, saith that the defendant cannot by law justify the defamatory words by him acknowledged to have been spoken, and that at any rate he cannot put off the tryal of this cause by any such evasion and ill-founded suggestion.

The Court order that venire do issue as prayed for, the defendant having shown no legal reason to the contrary.

Mr. Thos. Walker, for plaintiff, prays that as the defendant do not appear that a default may be entered against them, which the Court order accordingly.

Mr. Daniel Jones
vs.
Wm. & Eph'm
Merrick.

The plaintiff appeared, and the defendant not appearing, the Court order a default to be entered.

Richard Smith
vs.
Daniel Cameron.

Mr. Thos. Walker, for plaintiff, offered arguments in support of his petition.

Wm. Falkner, Esq.,
vs.
Joseph Brownell,
Sen.

The defendant awarded same.

COURT OF COMMON PLEAS.

28th SEPTEMBER, 1791.

Present: The same Judges.

Mr. Walker, for plaintiff, moves that this cause be continued till next term on consent of parties, which the Court order.

Justus Sherwood,
Esq.,
vs.
Samuel Adams.

Wm. Falkner, Esq.,
vs.
Jos. Brownell, Sen.

Mr. Walker, for plaintiff, moves for judgment on the issue joined.

The Court having considered the arguments of the parties upon the petition presented by plaintiff, order that the execution issued be quashed and that the execution do issue de novo against Wm. Falkner, Esq., in his quality of curator, only the Court reserves the costs.

Jacob Empey
vs.
Nicholas Lang.

The plaintiff appears and prays leave to withdraw his action, which the Court grant on payment of costs.

Richard Smith
vs.
Daniel Cameron.

.....

The Court stands adjourned over till the last Tuesday in January, 1792.

10th DECEMBER, 1792.

At a COURT OF COMMON PLEAS, held at Osnabruck, on Monday, the tenth day of December, in the year of Our Lord, one thousand seven hundred and ninety-two.

Present: The Honourables Richard Duncan, John McDonell, and John Munro, Esquires.

By order of the Court, read a Commission appointing John Munro, Esquire, to be one of the Justices of the Court of Common Pleas for the Eastern District of the Province of Upper Canada, and a Commission constituting Mr. Cornelius Munro, Gent., to be Sheriff of the said district, both of whom took the oath of office in open court.

Daniel Jones
vs.
Wm. & Stephen
Merrick.

The plaintiff prays that this cause may lay over till next term, which prayer the Court accordingly grant and order the same to be continued.

Simeon Coville
vs.
Abell & Jas.
Harrington.

The parties duly called do not appear, the Court therefore order this action to be dismissed.

Charles Bennet
vs.
Thos. Stratton.

The Sheriff returned the writ of attachment. The plaintiff and defendant being duly called, neither of them appear.

Ordered to lay over till to-morrow morning.

John Barnhart
vs.
George Barnhart.

The Sheriff returned the writ. The plaintiff appeared and filed declaration. The defendant does not appear.

The Sheriff returned the writ.
The plaintiff appears and enters retraxit.

Hugh Ross
vs.
John Smith.

The Sheriff returned the writ.
Plaintiff appears and enters retraxit.

Hugh Ross
vs.
John Pescod.

The plaintiff and defendant being duly called and neither appearing, the Court therefore order this action to be dismissed, the plaintiff paying costs.

Daniel McIntosh
vs.
Murdoch
McPherson.

The plaintiff appears and filed declaration.
The defendant being duly called does not appear.
This cause order to lay over till to-morrow morning.

Justus Sely
vs.
Hugh Johns.

The Sheriff returned the writ.
The plaintiff appears and enters retraxit.

Mr. Hugh Ross
vs.
Ziba Phillips,
Thos. Sherwood,
Esq.

The Sheriff returned the writ.
Plaintiff appears and filed declaration.
Court adjourned till to-morrow morning at 10 o'clock.

Mr. Allan Paterson
vs.
Jared Sely.

TUESDAY, 11th DECEMBER, 1792.

The Court met pursuant to adjournment.
Present: The same Judges.

The parties being again duly called neither of them appear. The Court do therefore order this suit to be dismissed, and that the plaintiff do pay the costs that have accrued in this action.

Charles Bennet
vs.
Thos. Stratton.

The plaintiff prays default may be entered against the defendant in this action.

John Barnhart
vs.
George Barnhart.

The Court order the default to be entered against the defendant. Upon reconsideration it is ordered that this cause be dismissed from the old process, and to commence de novo.

The Court having seen the process in this action which was made returnable at a term Court, when there were not judges enough in the District to compose a term Court, consequently there was no term Court held at the time appointed for the return of the process in this suit. The Court are therefore of opinion that this action is not in existence on the old, or first process, and order that it do commence de novo.

Justus Sely
vs.
Hugh Johns.

This action having been continued over from the term held on the twenty-eighth day of September, which was in

Justus Sherwood,
Esq.,
vs.
Mr. Samuel Adams.

the year one thousand seven hundred and ninety-one, till the next ensuing term after the above date, which term Court was advertised to be on the thirty-first day of January then next ensuing from the above date, at Osnabruck, at which time and place the defendant did appear in pursuance of the continuation of the suit; but there not having been judges enough in this District to compose a term Court at the above appointed time, there was none held.

The Court are therefore of opinion that the defendant is discharged from the old process by his attendance and appearance on the aforesaid thirty-first day of January, and do therefore order that this action be commenced de novo, and that new process do issue for that purpose.

Mr. Allan
Paterson
vs.
Jared Sely.

On motion and prayer of the plaintiff, and on the defendant being duly called and not appearing, the Court order a default to be entered against him, and that a copy of the same be served upon the defendant.

Mr. John McGill,
of Montreal,
merchant,
vs.
John McDonell,
curator to the
estate of Duncan
McDonell,
deceased.

On motion and prayer of Mr. Richard Wilkinson, of Charlottenburg, merchant, it is ordered that the defendant do be and appear before the Judges of His Majesty's Pre-rogative Court for the District of Lunenburg, at the house of Richard Loucks, in Osnabruck, on Wednesday, the sixteenth day of January now next ensuing, then and there to render in upon oath a just and true account of what he, as Curator to said estate, shall have done relative to disposing of the property thereunto belonging and appertaining, and towards discharging the debt and demands against the same. This rule to be served upon the Curator that he may attend accordingly.

RICHARD DUNCAN, *J.C.P.*
J. McDONELL, *J.C.P.*
JOHN MUNRO, *J.C.P.*

14th JANUARY, 1793.

At a COURT OF COMMON PLEAS, held at Osnabruck, on Monday, the fourteenth day of January, one thousand seven hundred and ninety-three.

Present: The Honourables Richard Duncan, John McDonell, and John Munro, Esquires.

Justus Sherwood,
Esq.,
vs.
Mr. Samuel Adams.

The Sheriff returned the writ.

The plaintiff appears and files declaration.

The defendant appears and says that he is not prepared for tryal by reason that his evidence are absent and could

not be brought to this term Court, and therefore prays that this cause may be put off and continued over till next term to which the plaintiff says he has no objection, wherefore the Court do order this suit to be continued over till next term.

Default having been entered against the defendant in the last term, but neither of the parties now appearing, it is in consequence ordered that this cause be dismissed.

Daniel Jones
vs.
Wm. & Stephen
Merrick.

The Sheriff returned the writ.

The plaintiff appears and filed declaration and a note of hand from the defendant.

Justus Sealye
vs.
Hugh Johns.

The declaration being read and the defendant being duly called and not appearing, the plaintiff prays default may be entered against the defendant, which is ordered accordingly.

The Sheriff returned the writ.

The plaintiff appears and files declaration and exhibits a power of attorney, and prays that Mr. Allan Paterson, of Matilda, merchant, may be allowed to support his cause under his, the defendant's power of attorney, for that purpose given, which the Court admit.

John Barnhart
vs.
George Barnhart.

The defendant appears and says that he has received no summons at the suit of the plaintiff to appear here this day, that he is here at present on other business, and that therefore he is not prepared for trial at this Court, and prays that this plea may be admitted, the Court admit the plea accordingly and discharge him this suit for the present.

The Sheriff returned the writ.

Plaintiff appears and filed declaration.

The defendant appears and makes it appear to the Court, by the plaintiff that they settled this action between them, wherefore the plaintiff prays a discontinuance of the suit, which the Court grant, on the costs being paid.

Alexander Rose
vs.
James Wilson.

The Sheriff returned the writ.

The plaintiff appears and filed declaration and his account against the defendant, acknowledged by the defendant's writing at the bottom thereof to be a just and true account.

Mr. Allan
Paterson
vs.
Jacob Carns.
(Execution 4th
Feb'y, 1793.)

The defendant appears and acknowledges the debt.

The Court do therefore condemn him to pay to the plaintiff the sum of sixteen pounds, three shillings and sixpence currency, with costs of suit.

Allan Paterson
vs.
Jard Seley.
(Execution 4th
Feb'y, 1793.)

The plaintiff appears and files two notes of hand signed by the defendant, one for six pounds, five shillings, the other for forty-six pounds, thirteen shillings and ninepence, currency. The plaintiff represents to the Court that he obtained in the term of this Court held on the eleventh day of December now last past a default against the defendant, and that as the defendant does not appear at this time he, the plaintiff, humbly conceives himself entitled to a judgment against the defendant, and prays that it may be entered accordingly.

The Court having heard the merits of the suit, are of opinion that the plaintiff is entitled to a judgment against the defendant, and do therefore condemn the defendant to pay to the plaintiff the sum of fifty-two pounds, eighteen shillings and ninepence currency, with costs of suit.

Hugh Ross
vs.
John Anable.

The Sheriff returned the writ.

The plaintiff appears and filed declaration.

On motion and prayer of the plaintiff, it is ordered that this cause be put off and continued over to the next term.

Joseph Burton
vs.
Lewis Nadeau.

The Sheriff returned the writ.

The plaintiff filed declaration.

The defendant appears and acknowledges that he did call the plaintiff a thief, but represents to the Court that the notice he had to prepare for trial was too short, that therefore he is not at present ready to plead to the issue of this cause, and prays that the cause be put off and continued over till next term, which the Court accordingly grant and order the same to be continued over till next term.

Stephen Miller
vs.
Joseph Anderson.

The Sheriff returned the writ.

The plaintiff appears and files declaration, and an account against the defendant for the sum of seventy-five pounds, ten shillings and sevenpence currency.

The defendant appears and denies that the account is just, neither is he guilty as set forth in the plaintiff's declaration.

By and with the consent of the parties, the Court orders that this dispute in account be adjusted by arbitrators mutually to be chosen by the parties, and an umpire to be chosen if necessary, and that the arbitrators shall be carpenters. The parties in consequence have chosen, on the part of the plaintiff, William Kay, of the Town of Cornwall, and on the part of the defendant, Andrew Millross, of the Township of Cornwall, to be arbitrators in this cause, and in case the said arbitrators cannot agree they

shall chose an umpire, the arbitrators before they enter upon this duty to be sworn before a magistratè to do equal justice to plaintiff and defendant, that when the arbitrators shall have agreed either between themselves or by an umpire the award or umpirage shall be delivered into the next term Court for the final approbation or disapprobation thereof. This rule to be served upon the arbitrators that they may proceed accordingly.

The Sheriff returned the writ.

The plaintiff filed declaration, and an account against the defendant for the sum of seventeen pounds, six shillings and ninepence currency.

The defendant appears, and for his plea says that he is in nothing guilty as set forth in the plaintiff's declaration.

By and with the consent of parties, the Court order this cause to be submitted to the arbitrament of William Kay, of the Town of Cornwall, carpenter, chosen on the part of the plaintiff, and Andrew Millross, of the Township of Cornwall, carpenter, chosen on the part of the defendant, and if they cannot agree upon the matter in dispute they shall choose an umpire, and before the arbitrators enter upon this duty they shall be sworn before a magistrate to do equal justice to plaintiff and defendant, and that they the said arbitrators shall return their award, or umpirage, into the next term Court, to be then and there finally approved or disapproved by the judges. This rule to be served upon the said arbitrators that they may proceed accordingly.

The Court adjourned till Wednesday, the 16th January instant, at 10 o'clock in the forenoon.

WEDNESDAY, 16th JANUARY, 1793.

The Court met pursuant to adjournment.

Present: The same Judges.

The Sheriff returned the writ.

The plaintiff appears and files declaration and exhibits to the Court two notes of hand, one for fifteen pounds, eleven shillings and sixpence, bearing date 17th July, 1792, the other for thirty-four pounds, twelve shillings, bearing date 23rd July, 1792, the first signed by John German, and the other signed by Sherwood & Bennett, making together the sum of fifty pounds, three shillings and sixpence, which sum the plaintiff demands of the defendant.

The defendant appears and says for his plea that he is not indebted to the plaintiff as is set forth in the declaration, which he (the defendant) prays may be inquired of.

Stephen Miller
vs.
Samuel Anderson.

Jeremiah French
vs.
George Barnhart.

John Bradshaw, being duly sworn to give evidence in this cause, and being asked by the Court whether he (this deponent) was present at the time of passing the notes exhibited to the Court by the plaintiff from the defendant to the plaintiff.

Answer by the deponent, I was not present.

Question by the Court.—Were you present at any other time when the plaintiff and defendant had any conversation respecting the said notes?

Answer by the deponent.—I was, on the thirtieth day of July now last past, at the house of the plaintiff when a conversation happened between the plaintiff and defendant respecting the notes now in question, where I heard the defendant request of the plaintiff a receipt in full of all demands, to which the plaintiff answered that if he (the plaintiff) should receive the full amount of the notes endorsed by the defendant, and then in the plaintiff's possession, he would give the defendant such a receipt, to which the defendant replied: Sir, do you think I am such a fool as to give you so much (mentioning a sum which I do not now recollect) over and above the sum you demand of me, for nothing, and that you should come upon me for that sum again? In answer to which the plaintiff replied: You may depend upon it. The defendant then said: Give me up the notes and I will pay you your money, to which the plaintiff returned: I have sent your notes to town, to Mr. McGregor's, but as they are not yet gone to Montreal upon your paying the money the notes shall be stopped.

Question by the plaintiff.—Did you hear the defendant at that time say that he had borrowed from Tomma, an Indian, ten pounds, out of which he wished to reserve enough to pay you your fees as Deputy or sub-Sheriff, and also to pay the Sheriff his fees that had accrued in a former action between the parties in this suit?

Answer.—No.

Question by the defendant.—Did you hear the defendant say that he would pay the plaintiff the full amount of the notes or the neat sum due from the defendant to the plaintiff?

Answer.—I understood it to be the sum due from the defendant to the plaintiff, or the amount of an execution against the defendant at the suit of the plaintiff in a former action.—John Bradshaw.

Charles Bennitt, being duly sworn to give evidence in this cause, saith that he gave to the defendant at Cornwall, on the twenty-third day of July now last past, in conjunction with Samuel Sherwood, and under the firm of Sherwood & Bennitt, a note of hand for thirty-four

pounds, twelve shillings currency; twenty pounds, on account of which he, or they, were to pay to Messrs. Auldjo & Maitland, merchants, of Montreal, on their arriving at that place, but on their arriving they found that their obligation was not in the possession of Auldjo & Maitland, and learnt that it was in the hands of a Mr. John Plat, blacksmith, of Montreal, who was agent for the plaintiff, and held the note in consequence of an endorsement from the defendant to the plaintiff, that he (Bennitt) offered to pay the said twenty pounds to the said Plat, the acceptance of which he, the said Plat, refused unless the whole sum should be paid. He (Bennitt) then offered to the said Plat a raft of staves, which would have more than satisfied the note; this the said Plat also refused, in consequence of which the note was not paid and still remains unpaid, nor have they, the said Sherwood & Bennitt, since been in a situation to satisfy the same.

Question by the Court.—Did you make to the said Mr. John Plat any promise that you would settle or pay the said note before you left the town of Montreal?

Answer.—I told Mr. Plat that I would not leave the town without his knowledge if the note was not settled, and accordingly I did not leave the town without his advice to do so.

Question by the Court.—Had you been sued on your arrival at Montreal for the amount of the note, would you have then been able to pay it?

Answer.—Yes.

Question by the plaintiff: Had you, at the time that Mr. Plat gave his consent for you to leave Montreal, a sufficiency of property at that place to satisfy the note?

Answer.—No, but Mr. Plat knew that the property (which was rafts) was to leave Montreal, two days before they were taken away from that place.—Charles Bennitt.

The Sheriff returned the writ.

The plaintiff appears and filed declaration.

The defendant appears.

The Court adjourned till to-morrow morning at nine o'clock.

James Clark
vs.
John Cafford.

THURSDAY, 17th JANUARY, 1793.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiff filed a letter to him from Mr. John Plat, of Montreal.

Jeremiah French
vs.
George Barnhart.

The defendant exhibits to the Court a receipt from the plaintiff, viz.: Received 25th July, 1792, from Mr. George Barnhart the sum of seventy-five pounds, all demands that I have against him for execution issued out of the Court of Common Pleas for the District of Montreal against the property of the said George Barnhart, as witness my hand,
(Signed) JEREMIAH FRENCH.

The Court having seen the declaration, plea, and other exhibits filed in this cause, and heard the parties and evidence respectively, are of opinion, upon mature deliberation of the merits of the case, that there is no cause of action against the defendant. The opinion of the Court is founded upon the following principles, viz.:

1st. Because it is a law amongst merchants that notes tendered for payment must be indorsed to the person who applies for payment in order to make them negotiable; this was not done in the present instance. On this account the notes were not a legal tender.

2nd. And because, if this obstacle did not occur, the want of a regular protest rendered the claim of the plaintiff abortive.

3rd. Because the length of time between the presentment and the return (even if tendered) admits that there was an implied credit given to the drawers, which should not operate to the prejudice of the defendant who endorsed the notes.

And, lastly, because the receipt in full from the plaintiff to the defendant warrants an opinion from this circumstance alone that the notes were taken as absolute and not conditional payment.

The Court do therefore dismiss the defendant from this action with costs of suit to be taxed to him.

James Clark
vs.
John Cafford.

The plaintiff filed two advertisements, one from John Cameron informing the public that he (John Cameron) had purchased one fourth part of lot No. 20, on the south side of the River au Raisin, which is now in dispute between the plaintiff and defendant, and the other advertisement from the plaintiff, indicating his wish to dispose of said lot and offering the same for sale.

The defendant appears and says for his plea that he is not guilty as laid in the declaration, and that he has always been and is now ready to give up possession of the lot in dispute to the plaintiff upon his (the plaintiff) paying to him (the defendant) the value of the improvements which he has made on the said lot during his possession thereof.

The Court do order that at the end of eight months from this day, the defendant shall give up quiet possession

of Lot No. twenty, in front of the south side of the Riviere au Raisin, to the plaintiff, who is the legal proprietor, but previous to this the plaintiff shall pay to the defendant the value of his improvements on said lot, to be estimated and determined by arbitration respectively chosen by the parties in this suit, and in pursuance of this order they have chosen John McIntire and Daniel MacArthur on the part of the plaintiff, and Daniel Campbell and John McGruer on the part of the defendant, who shall be sworn before a magistrate to do equal justice to plaintiff and defendant, and in case the arbitrators above chosen do not agree upon the matter in dispute they shall choose an umpire, also to be sworn, and it is further ordered by the Court that the award of the said arbitrators, or umpirage, shall be returned into this Court at the next term to remain as a record in this suit, and further that the plaintiff and defendant shall pay their equal proportion of the costs of this suit, and that the defendant shall have the crop produced or to be produced on the said lot for this present year. This rule to be served upon the arbitrators that they may proceed accordingly.

Richard Duncan, *J.C.P.*
J. McDonell, *J.C.P.*
John Munro, *J.C.P.*

James Clark,
his
John X Cafford.
mark.

25th FEBRUARY, 1793.

At a COURT OF COMMON PLEAS, held at Stormont, in and for the District of Lunenburg, on Tuesday, the 26th February, 1793.

Present: The Honourables Richard Duncan, John McDonell, and John Munro, Esquires.

The plaintiff appears by his agent, Justus Sherwood, Esquire, who on behalf of the plaintiff represents to the Court that the plaintiff obtained a default against the defendant in last term, and now prays that judgment may be entered against the defendant.

The defendant having been duly called does not appear.

In consequence of the said default the Court condemn the defendant to pay to the plaintiff the amount of the defendant's note of hand, being the sum of thirteen pounds, nineteen shillings and threepence currency, together with costs of suit.

Justus Seelye
vs.
Hugh Johns.

(Execution 15th
March, 1793.)

The plaintiff appears and enters retraxit.

James Clark
vs.
John Cafford.

Hugh Ross
vs.
John Anable.

The plaintiff appears and files note of hand of the defendant, whereon is a balance due to the plaintiff of the sum of fifteen pounds, four shillings and sevenpence.

The defendant having been duly called does not appear.

The plaintiff therefore prays default may be entered against him, which the Court grant accordingly.

Justus Sherwood,
Esq.,
vs.
Mr. Samuel Adams.

The plaintiff appears in person.

The defendant appears by Mr. Antill, attorney. Mr. Antill filed plea for defendant.

The plaintiff, saving and reserving to himself the benefit and advantage of replying to the other matters contained in the defendant's plea, says for reply, that he does and ought to maintain his action against the defendant, and that his action is not prescribed as set forth in the defendant's plea.

The plaintiff represents to the Honorable Court that although he is prepared to join issue with the defendant on the action as set forth in the plaintiff's declaration, yet as the defendant's plea of prescription appears to be a point in law of which the plaintiff is ignorant, he humbly prays the Honorable Court will indulge him with time to procure counsel.

The Court take the prayer of the plaintiff into consideration.

Motion by Mr. Antill on the part of the defendant: As Mr. Sherwood is not prepared with counsel to assist him, declines speaking to the point, and prays the Court to take into their consideration the issue joined between the parties whether the above action is prescribed by law or not.

The Court take time to consider of the defendant's prayer.

Hugh Ross
vs.
John Link.

The Sheriff returned the writ.

The plaintiff appears and filed declaration and a note of hand of the defendant for forty-two pounds, twelve shillings and eightpence currency.

The defendant appears and confesses that he gave the note, and offers reasons to counteract it which the Court cannot admit of.

They therefore condemn the defendant to pay to the plaintiff the said sum of forty-two pounds, twelve shillings and eightpence currency, with costs of suit.

Joseph Burton
vs.
Lewis Nadeau.

The plaintiff appears in person.

The defendant appears in person and says that he is now ready to defend this suit, and prays that the cause may be tried by a jury.

The Court grant the prayer of the defendant and order this cause to be tried by a jury and that venire do issue for that purpose, returnable to-morrow at twelve o'clock.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

Alexander Grant
vs.
William Brannen.

The defendant appears and says that he has been disabled by sickness and thereby has been prevented from making up his account against the plaintiff. That the plaintiff did not furnish him with a copy of the account now exhibited against him, that therefore he is not prepared for trial, and therefore prays that this cause may be put off till next term.

The Court recommend to the parties to come to a settlement between themselves, and order them to withdraw for that purpose.

The parties return into court and cannot come to an accommodation, the Court therefore take up the cause and upon an investigation of their respective claims, find a balance in favour of the plaintiff of eight pounds, one shilling and elevenpence halfpenny, which sum the Court condemn the defendant to pay to the plaintiff with costs, as in actions under ten pounds sterling.

The Court adjourned till nine o'clock to-morrow morning.

WEDNESDAY, 27th FEBRUARY, 1793.

Court met pursuant to adjournment.

Present: The same Judges.

The Court in answer to the point of law referred to their decision respecting the prescription set forth in the defendant's plea are of opinion that it does not apply to this case, as the proceedings in this cause agreeable to the records of the Court were commenced within the time prescribed by law, regularly handed down, and continued, and because the parties at the last term were both present and mutually accorded with respect to a prosecution of the suit upon the same ground, and, moreover, the defendant was then indulged by the Court at his own request and by consent of the plaintiff to adjourn the cause to this term for want of evidence, and did not then state any objection respecting the prescription as now set forth in his plea. But, even supposing there might be a defect in the plaintiff's declaration, the Court conceive that it ought not to operate to extinguish his suit, as the want of proper counsel might readily betray him and others into errors of

Justus Sherwood
vs.
Samuel Adams.

this nature, particularly where there is professional counsel on the one side and not on the other.

Mr. Antill, of counsel for the defendant, moves that the plaintiff be ordered to reply instanter to the two points in the defendant's plea remaining unanswered, unless he wishes for time to obtain the assistance of counsel.

The plaintiff moves that time be granted him to obtain counsel before he replies fully to the defendant's plea, which is accordingly granted.

It is ordered on the motion of Mr. Antill, of counsel for the defendant, and with the consent of the plaintiff, personally present in Court, that on the coming of the plaintiff's replication with sufficient proof of a copy having been previously served on the defendant or his attorney, that one or more commissions rogatoire do issue for the examination of such witnesses as either party may think material who reside beyond the jurisdiction of this Court upon interrogatories to be settled between the parties and to be annexed to the said commissions respectively, and it is further ordered that each party do communicate to each other or to their attorneys respectively within two months from the date hereof the interrogatories by them intended to be annexed to the said commissions, and that in default of communication of such interrogatories being given by the plaintiff within the time before mentioned such commissions shall issue on the part of the defendant only.

Alexander Grant
vs.
John Cain.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant being duly called does not appear.

The plaintiff filed account against the defendant and his note of hand, and prays default against the defendant.

The Court order that default be entered against the defendant.

John Barnhart
vs.
George Barnhart.

The Sheriff returned the writ.

The plaintiff appears and filed declaration.

The defendant appears and denies that he is indebted to the plaintiff in any manner as set forth in the plaintiff's declaration, and prays that he may have time till next term.

Mr. Antill, for the plaintiff, moves that the defendant do not have time, but that he be ordered to produce an order given by the plaintiff to the defendant on Colonel John Buttler for the sum demanded in the declaration, and prays that in default thereof the defendant be condemned to pay to the plaintiff the sum demanded in the declaration. The Court order accordingly, and that defendant do come to trial immediately.

Jacob Carns, of the County of Dundas, yeoman, being duly sworn to give evidence in this cause, saith that he was at Niagara in the month of September last, where he saw Colonel John Buttler, who then told the deponent in a conversation between them concerning the said matter in dispute between the parties in this suit, that the said Colonel John Buttler had paid the order of John Barnhart to George Barnhart, the defendant.

Question on the part of the plaintiff: Did you hear Colonel Buttler say at the time you received the money for a demand you had upon him in September last, that he believed he had already paid the amount of your demand to George Barnhart, the defendant?

Answer.—Yes.

Mr. Antill having referred to the defendant's oath whether he had received the order in dispute or not, he declined taking the oath, but acknowledged to have received the order.

Jacob Carns, being questioned by the defendant whether the cattle sold to Colonel Buttler for which he became indebted to the plaintiff, belong to the plaintiff or to his father's estate?

Answer.—They belonged to the plaintiff.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

One of the defendants, John Kryslar, appears; the other, Philip Kryslar, being duly called, does not appear.

The defendant, John Kryslar, acknowledges the debt.

The plaintiff filed a note of hand given jointly and severally by the defendants, and prays judgment may be entered against the defendant, John Kryslar, and that default may be entered against the defendant Philip Kryslar.

The Court admit the plaintiff's prayer, and order that a default be entered against Philip Kryslar, and condemn the defendant, John Kryslar, to pay to the plaintiff the amount of the note of hand, being the sum of fifteen pounds, Halifax currency, with lawful interest on said sum from the eighth day of February in the year of our Lord one thousand seven hundred and ninety-two till actual payment, together with costs of suit.

Simeon Coville
vs.
Philip Kryslar &
John Kryslar.

The plaintiff and defendant appear and file an award of arbitration appointed to investigate the matter in dispute between the parties, by a rule of Court made in the last term.

The Court having seen the award exhibited by the parties, conceive by the wording of it that the work has not been properly investigated. It is therefore ordered

Stephen Miller
vs.
Joseph Anderson.

that a new rule be served on the same arbitrators couched in words fully expressive that they are to examine the work and make allowances for any defects or deficiencies in the same, and fully to take cognizance of every other matter in controversy between the said parties relative to the business, and report by an award amended whatever balance they may find due either to the plaintiff or defendant to be delivered in at the next term Court. The Court further order that the parties shall reciprocally exchange accounts as soon as possible for the purpose of facilitating the business.

It is therefore ordered by and with consent of both plaintiff and defendant that this dispute between them be adjusted by arbitrators mutually to be chosen by the parties, and that such arbitrators shall be carpenters, in pursuance of which they have chosen on the part of the plaintiff William Kay, of the Town of Cornwall, and on the part of the defendant Andrew Millross, of the Township of Cornwall, carpenters, who shall be arbitrators, to examine into every matter respecting the grounds of the suit now existing between the parties and all matters of account respecting the same. The arbitrators shall examine the work done by the plaintiff for the defendant and make allowances for any defects and deficiencies that they as carpenters shall find in the said work, and they shall make such deductions from the plaintiff's wages as they shall think necessary and just, and after they shall have made all the necessary investigations and deductions, if any shall be necessary and proper, they shall strike a balance between the plaintiff and defendant and report accordingly on their award to this Court in its next term. And if the said arbitrators cannot agree they shall choose an umpire, who shall be a carpenter, and who shall proceed according to the power given in this rule, and return his umpirage to this Court at the above appointed time for the approbation or disapprobation thereof.

Stephen Miller
vs.
Capt. Samuel
Anderson.

The parties appear and produce an award of arbitration conformable to a rule of Court issued out of this Court in the last term.

The Court having seen the award exhibited by the parties, do find that the arbitrators have awarded to the plaintiff the sum of sevenpence currency, which sum the defendant is condemned to pay to the plaintiff, with costs as in action under the sum of ten pounds sterling.

The defendant paid the debt in court.

John Barnhart
vs.
George Barnhart.

On seeing the declaration in this cause and the defendant's plea, and having heard the parties respectively

as well as the evidence, the Court are clearly of opinion from the defendant's own confession with respect to the reception of the orders, that he has made himself responsible for the amount of it, the Court therefore order and adjudge that the defendant pay to the plaintiff the sum of eleven pounds, five shillings currency, with costs of suit.

The Sheriff returned the venire.

The parties appear.

The jury impannelled and sworn to try the issue in this cause were :

Joseph Burton
vs.
Lewis Nadeau.

1. Samuel Anderson, Esq.
2. Jeremiah French, Esq.
3. Mr. Hugh Ross.
4. Mr. John Beikie.
5. Mr. David Bruce.
6. Mr. Richard Warffe.
7. Mr. John Emerson.
8. Mr. Andrew Wilson.
9. Mr. Francis Clark.
10. Mr. John Smith, Sen.
11. Mr. Evan Roui.
12. Joseph Anderson, Esq.

Evidence sworn on the part of the defendant: 1, William Poter; 2, John McCaffery; 3, Patrick McGuire; 4, John Grant.

The jury having heard their evidence retire to consider of their verdict, under charge of John Bradshaw, bailiff.

The jury having returned into court say by their foreman, Samuel Anderson, Esquire, that they find a verdict for the plaintiff of five shillings damages and costs of suit, and so they say all.

The Court confirm the verdict of the jury and condemn the defendant to pay to the plaintiff the sum of five shillings for his damages and costs of suit.

The Court adjourned till to-morrow morning at nine o'clock.

THURSDAY, 28th FEBRUARY, 1793.

Court met pursuant to adjournment.

Present: The same Judges.

The Sheriff returned the writ.

The plaintiff appears and files declaration.

The defendant being duly called does not appear.

John Empey &
Simon Clark
vs.
Philip Krysler.

The plaintiff files a bond of the defendant for sixty pounds currency, and pray default may be entered against the defendant.

The Court order a default to be entered against the defendant accordingly.

Hugh Ross
vs.
Farquhar
McDonell.

The Sheriff returned the writ.

The plaintiff appears and files declaration.

The defendant appears in person and confesses the plaintiff's demand to be justly due to him.

The plaintiff filed two notes of hand, both together amounting to the sum of seventy-nine pounds, five shillings and one penny currency.

The Court having heard the defendant's confession of the debt and ordered the same to be entered of record, do condemn the defendant to pay to the plaintiff the sum of seventy-nine pounds, five shillings and one penny currency and interest on fifty-four pounds, three shillings and fourpence of that sum from the fifteenth day of September in the year of our Lord one thousand seven hundred and ninety, together with costs of suit.

Farquhar
McDonell
vs.
Martin Walter.

Sheriff returned the writ.

Mr. Antill appears for the plaintiff and filed declaration.

The defendant appears in person and says that he did enter into agreement with the plaintiff as set forth in the declaration, but that he has done some work towards completing and fulfilling the obligation.

Mr. Antill for the plaintiff filed a bond from the defendant to the plaintiff.

This cause by consent of parties is ordered to be submitted to the arbitrament of Adam Snyder, of the County of Dundas, yeoman, on the part of the plaintiff, and Adam Empey, of the County of Stormont, yeoman, on the part of the defendant, and in case they cannot agree it is likewise ordered by the Court that Frederick Weaver, of the aforesaid County of Dundas, yeoman, shall act as umpire between them, who, after taking time to investigate the agreement which the plaintiff has exhibited, shall ascertain what the value of the work is which has been neglected to be done, and the damages which have accrued to the plaintiff in consequence thereof, and shall take up any charges which the defendant can substantiate in work, or otherwise to counteract or reduce the demand of the plaintiff. This rule to be served on the arbitrators, who shall give in their award or umpirage at the next term court to be held in and for this district, and that the award of the

said arbitrators or any two of them shall be binding on the parties.

The plaintiff filed affidavit to ground attachment.

Simeon Coville
vs.
Abel & James
Harrington.

The Court adjourned till next term.

RICHARD DUNCAN, *J.C.P.*
J. McDONELL, *J.C.P.*
JOHN MUNRO, *J.C.P.*

21st MAY, 1793.

At COURT OF COMMON PLEAS, held at Osnabruck, in the County of Stormont, in and for the Eastern District of the Province of Upper Canada, on Tuesday, the twenty-first day of May, 1793.

Present: The Honourables Richard Duncan and John Munro, Esquires.

The Sheriff returned the writ of attachment.
The plaintiff appeared and filed declaration.

Simeon Coville
vs.
Abel & James
Harrington.

The Sheriff returned the writ.
The plaintiff appeared and filed declaration.

Simeon Covill
vs.
Stephen Mirick.

The Sheriff returned the writ.
The plaintiff appeared and filed declaration.
The defendant appears.

Hugh Ross
vs.
John Smith, Sen.

The Sheriff returned the writ.
The plaintiff appears and filed declaration.

Hugh Ross
vs.
Thomas Sherwood.

The Sheriff returned the writ.
The plaintiff appeared and filed declaration.
The defendants appear.

Robert McGregor
vs.
John & Michael
Quin.

The Sheriff returned the writ.
The plaintiff appeared and filed declaration.

Robert McGregor
vs.
Robert Gordon.

The Sheriff returned the writ.
The plaintiff appeared and filed declaration.

Simeon Covill
vs.
Hezekiah Mosher.

The Sheriff returned the writ.
The plaintiff appeared and filed declaration.

William Fraser
vs.
Thomas & James
Boyd.

The Sheriff returned the writ.
The parties having been duly called do not appear.
It is therefore ordered that this cause be dismissed
with cost to be taxed to the defendant.

Amos McKenney
vs.
Mrs. Jean
McIntosh.

Justus Sherwood
vs.
Samuel Adams.

The plaintiff appears in person.

The defendant appears in person.

On motion and prayer of the plaintiff, it is ordered that the replication be filed.

Hugh Ross
vs.
John Anable.

The plaintiff appears and enters retraxit.

Alexander Grant
vs.
John Cain.

The parties, plaintiff and defendant, having been duly called do not appear.

The Court therefore order this cause to be dismissed, with costs to be taxed to the defendant.

Simeon Covill
vs.
Phillip & John
Krysler.

The plaintiff appears in person and prays that in consequence of a default obtained in the last term against the defendant, Phillip Krysler, who having been again duly called does make default, the Court will order judgment to be entered up against the said defendant, Phillip Krysler.

In this action the plaintiff having in last term obtained a judgment against the defendant John Krysler, and a default against the defendant Phillip Krysler, and the defendant Phillip Krysler not appearing at present, the Court do therefore give the same judgment against the defendants, jointly and severally.

Stephen Miller
vs.
Joseph Anderson.

The plaintiff appears in person.

The defendant appears in person.

John Empey
& Simon Clark
vs.
Phillip Krysler.

On motion of Mr. Jacob Farand, it is ordered that he file a power of attorney constituting him agent for the plaintiffs and empowering him to ask judgment against the defendant.

The plaintiffs in this action, having obtained a default in the last term against the defendants, and the defendant still not appearing, the Court, on prayer of the plaintiff's agent, do condemn the defendant to pay the plaintiffs the sum of sixty pounds currency, being the sum contained in the bond filed by the plaintiffs in this cause, with lawful interest on the said sum of sixty pounds from the nineteenth day of February now last past till actual payment, together with costs of suit to be taxed.

Farquhar
McDonell
vs.
Martin Walter.

The plaintiff appears in person.

The defendant appears in person.

This cause having been submitted in the last term to referees, who having brought in their award, the Court find fault with the principle on which the arbitrators took up the business, in consequence of which the Court, with the approbation of the parties, appoint other arbitrators to

settle all matters in controversy between the said parties agreeable to a rule of Court in this action at the last term, and that the persons named for this purpose shall be John Coons and John Smith, who, if they cannot agree in their award, will appoint an umpire and give in their award or umpirage at this term Court.

The plaintiff filed an award of arbitration agreeable to a rule made in this Court at the last term, and prays judgment thereon.

Stephen Miller
vs.
Joseph Anderson.

This action having been submitted to arbitration, upon the award being produced, the Court find that each of the accounts have been investigated and balanced, with respect to costs the Court order that the costs accrued in this suit shall be paid in equal proportion by the parties, plaintiff and defendant.

The Court adjourned till to-morrow at nine o'clock in the forenoon.

WEDNESDAY, 22nd MAY, 1793.

The Court met pursuant to adjournment.

Present: The same Judges.

The parties being present in Court, the defendant moves that a Rule of Court be made that if the plaintiff does not within one month from this day give in his interrogatories to Mr. Antill, the defendant's attorney, that then the defendant shall have liberty to proceed and take his witnesses' affidavits, by a commission rogatoire, which shall then be issued on the part of the defendant only.

Justus Sherwood
vs.
Samuel Adams.

The Court consider the defendant's motion as inadmissible, and on consideration of the merits of the case determine that whereas it appears to the Court in this cause that the want of equal counsel on the part of the plaintiff at the last term, and the want of the parties' attorneys at this term, has involved questions which tend more to puzzle than enlighten, on this account therefore it is ordered that the points which retard the progress of this suit be argued by the respective attorneys at the next term, when the Court will then come to a resolution to make a rule in order to remove every difficulty in the way, and it is likewise ordered by the Court that the order for the commission rogatoire in this cause obtained at the last term be suspended for the aforesaid reasons, and that if the attorneys do not attend that the Court will, notwithstanding, proceed to put a period to this suit.

Simeon Covill
vs.
Abel & James
Harrington.

The defendants having been duly called do not appear.
On motion and prayer of the plaintiff, it is ordered
that a default be entered against the defendant.

Simeon Covill
vs.
Stephen Merick.

The defendant having been duly called does not appear.
On motion and prayer of the plaintiff, it is ordered
that a default be entered against the defendant.

Filed by the plaintiff a note of hand of the defendant
for the sum of twenty-nine pounds, eighteen shillings and
sevenpence, current money of the State of New York,
equal to nineteen pounds, four shillings, Halifax currency,
with interest at the rate of seven per cent.

Farquhar
McDonell
vs.
Martin Walter.

The parties appear in Court, and arbitrators agreeable
to a rule made yesterday in this cause, return their award
into court, which on motion of the plaintiff is ordered to
be filed.

Hugh Ross
vs.
Thomas Sherwood.

The defendant having been duly called does not appear.
It is therefore ordered, on motion of the plaintiff, that
a default be entered against the defendant.

Hugh Ross
vs.
John Smith, Sen.

The parties appear in Court.
The defendant says for his plea that the plaintiff's de-
mand is just, as laid in the declaration.

The plaintiff filed a note of hand of the defendant and
prays judgment thereon.

The defendant appears and confesses the debt, where-
fore the Court condemn him to pay to the plaintiff the
sum of fourteen pounds, three shillings and one penny,
Halifax currency, being the amount of the defendant's
note of hand filed in this cause by the plaintiff, together
with costs of suit.

Robert McGregor
vs.
John & Michael
Quin.

On motion of the plaintiff, it is ordered that the de-
fendants do reply to the declaration this day, and accord-
ingly the defendant, Michael Quin, says for his plea that
he is in no wise guilty as set forth in the plaintiff's de-
claration, and the defendant John Quin says for his plea
that he is not indebted to the plaintiff in the full sum as
set forth in the declaration, but confesses to have had deal-
ings with the plaintiff and that there may be a balance
due from him to the plaintiff, of which he prays the truth
may be inquired.

The plaintiff filed an attested account against the de-
fendants, wherein there appears a balance due to the plain-
tiff of the sum of sixteen pounds, seven shillings and nine-
pence halfpenny currency.

The defendant John Quin represents to the Court that at the time the British Government granted compensation to such suffering Loyalists as had lost their property by their adherence to that Government, he (the defendant) appointed Messrs. Dobie & Badgely to be his agents to receive the compensation that might be allowed to him, and that he has never had an account current from then which ought to have been given to him by the plaintiff who acted as an agent to the said Messrs. Dobie & Badgely, of Montreal, merchants, and that consequently he does not know whether there is any balance on that account due to him or not.

The plaintiff comes forward and makes oath that the said account current was delivered by him to the defendants.

The defendant having been duly called does not appear.

It is therefore ordered on motion of the plaintiff that a default be entered against the defendant.

Robert McGregor
vs.
Robert Gordon.

The defendant having been duly called does not appear.

It is therefore ordered on motion of the plaintiff that a default be entered against the defendant.

Simeon Covill
vs.
Hezekiah Mosher.

The defendants having been duly called do not appear.

It is therefore ordered on motion of the plaintiff, personally present in Court, that a default be entered against the defendants.

William Fraser
vs.
James & Thomas
Boyd.

The Court having seen the award filed in this cause, and the arbitrators having therein awarded to the plaintiff the sum of twelve pounds, five shillings, Halifax currency, for his damages, the Court do confirm the same, and condemn the defendant to pay to the plaintiff the said sum of twelve pounds, five shillings, Halifax currency, together with costs of suit, to be taxed.

Farquhar
McDonell
vs.
Martin Walter.

The parties having been heard fully on their respective behalves the Court do order and adjudge that the defendants do pay to the plaintiff the sum of sixteen pounds, one shilling and twopence halfpenny currency, being the sum demanded in and by the plaintiff's declaration, and the Court do further condemn the defendants to pay to the plaintiff the costs of this suit.

Robert McGregor
vs.
John & Michael
Quin.

With consent of the plaintiff, personally present in court, it is ordered that execution upon this judgment be stayed for three months from this day.

The Court adjourned till next term.

RICHARD DUNCAN, *J.C.P.*
JOHN MUNRO, *J.C.P.*

LIST OF NAMES.

- | | |
|--|---------------------------|
| 1. Capt. Hugh McDonell. | 25. Mr. George Stewart. |
| 2. Capt. John McDonell. | 26. Mr. John Cadman, Sen. |
| 3. Capt. John McKenzie. | 27. Mr. David Jacobs. |
| 4. Capt. Ran'd McDonell. | 28. Capt. Jno. Stegmann. |
| 5. Mr. Andrew Wilson. | 29. Mr. William Morgan. |
| 6. Thos. Swan, Esq. | 30. Mr. Samuel Moss. |
| 7. Mr. Robert McGrigor. | 31. Mr. Conrad Defoe. |
| 8. Mr. John Biekie. | 32. Mr. John Wilson. |
| 9. Mr. Richard Warffe. | 33. Mr. John Coons. |
| 10. Mr. Miles McDonell. | 34. Mr. John Empey. |
| 11. Capt. Neil McLean. | 35. Mr. Adam Empey. |
| 12. Capt. Ran'd McDonell, R. au Raison. | 36. Mr. Wm. Empey, Sen. |
| 13. Major Arch McDonell. | 37. Mr. Nicholas Ault. |
| 14. Mr. Jeremiah French. | 38. Mr. Jos. Loucks. |
| 15. Mr. Eb'r Wright. | 39. Mr. John Pescot. |
| 16. Mr. David Robinson. | 40. Mr. Geo. Barnhart. |
| 17. Mr. Daniel Campbell. | 41. Mr. Nathan Putnem. |
| 18. Mr. Phillip Empey. | 42. Mr. John McNairn. |
| 19. Mr. Abraham Marsh. | 43. Mr. Evan Royce, Sen. |
| 20. Mr. John Annibal. | 44. Mr. Levy Bailly. |
| 21. Mr. Andrew Millross. | 45. Mr. Jonas Wood, Sen. |
| 22. Joseph Brownell, Sen. | 46. Mr. John Browning. |
| 23. Mr. James Forsyth. | 47. Mr. John Markely. |
| 24. Mr. John Dixon. | 48. Mr. Frederick Wever. |

UPPER CANADA EASTERN DISTRICT.

5th NOVEMBER, 1793.

At a COURT OF COMMON PLEAS, held at Osnabruck, in the County of Stormont, in and for the Eastern District of the Province of Upper Canada, on Tuesday, the fifth day of November, in the year of our Lord one thousand seven hundred and ninety-three, and in the thirty-fourth year of the reign of our Sovereign Lord, George the Third, etc.

Present: The Honorables John McDonell and John Munro, Esquires.

Robert McGregor
vs.
John Bryon.

The plaintiff appears, and moves the Court that he be admitted to file his affidavit for grounding process of attachment against the defendant. The Court admit of the plaintiff's motion, and he accordingly filed the affidavit.

The defendant having been duly called does not appear.

The Sheriff returned the process of attachment and summons.

The plaintiff filed declaration.

The plaintiff appears.

The defendant appears.

Ordered by the Court, that this cause be called again to-morrow.

Charles Bennett
vs.
Thomas Stratton.

The Sheriff returned the writ.

The plaintiff appears and filed declaration.

The defendant having been duly called does not appear.

William Loucks
vs.
John Storing.

On motion of Jacob Farrand, of the County of Stormont, Esquire, agent for the plaintiff, duly appointed by special power of attorney for that purpose, it is admitted that the said power of attorney be filed, and it was accordingly filed.

The Sheriff returned the writ.

Jacob Farrand, Esquire, appears as agent for the plaintiff and filed declaration.

The defendant having been duly called does not appear.

Ordered to lay over till to-morrow.

Terence Smith
vs.
John Man.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been duly called does not appear, therefore on motion of the plaintiffs it is ordered that a default be entered against the defendant.

Wilkinson & Beikie
vs.
Joseph Falkner.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been duly called does not appear, therefore, on motion of the plaintiffs, it is ordered that a default be entered against the defendant.

Wilkinson & Beikie
vs.
John McCredy.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been duly called does not appear, therefore, on motion of the plaintiff, it is ordered that a default be entered against the defendant.

John Beikie
vs.
John McCredy.

The Sheriff returned the writ.

The plaintiff appeared.

The defendant did not appear.

With consent of the plaintiff, ordered to lay over till to-morrow.

William Fraser
vs.
William Robertson

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been duly called does not appear, therefore, on motion of the plaintiff, it is ordered that a default be entered against the defendant.

William Fraser
vs.
Joseph Griffin.

Joseph Robinson
vs.
John Rorbach &
Catherine
Rorbach.

The Sheriff returned the writ.
The plaintiff appeared and filed declaration.
The defendants having been duly called do not appear.
Ordered to lay over till to-morrow.

Joseph Robinson
vs.
Jacob Bonisteel
& Christian
Bonisteel.

The Sheriff returned the writ.
The plaintiff appeared and filed declaration.
The defendants having been duly called do not appear.
Ordered to lay over till to-morrow.

John Bass
vs.
Stephen Merick.

The Sheriff returned the writ.
The parties, plaintiff and defendant, having been duly called, neither of them appear, it is therefore ordered that this cause be dismissed with costs.

Thomas Petters
vs.
Major Watson.

The Sheriff returned the writ.
The plaintiff appears.
Ordered to be called again to-morrow.

Ordered by the Court that such writs and causes as were made returnable here this day and cannot be returned by reason of the lateness of the night, shall lay over and be returned to-morrow.

The Court adjourned till to-morrow at nine o'clock in the forenoon.

WEDNESDAY, 6th NOVEMBER, 1793.

The Court met pursuant to adjournment.
Present: The same Judges.

Thomas Petters
vs.
Major Watson.

The plaintiff appeared and filed declaration.
The defendant having been duly called does not appear, therefore, on motion of the plaintiff, it is ordered that a default be entered against the defendant.

John Potter
vs.
Nicholas Kilmore.

The Sheriff returned the writ.
The parties having been duly called, but neither of them appearing, it is ordered that this suit be dismissed with costs to be paid by the plaintiff.

Joseph White
vs.
Samuel Shipman.

The Sheriff returned the writ.
The plaintiff appeared and filed declaration.
The defendant appears.

Joseph White
vs.
John McNeil.

The Sheriff returned the writ.
The plaintiff appears and entered retraxit.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been duly called does not appear.

Therefore, on motion of the plaintiff, it is ordered that default be entered against the defendant.

Joseph White
vs.
Joseph Griffin.

The Sheriff returned the writ.

The parties being called, neither of them appear in person, but the plaintiff, by an agent, prays that this cause may lay over till the last day of this term without being dismissed.

Joseph Anderson
vs.
David Bissell.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been called does not appear in person, but Doctor Solomon Jones, of Augusta, appears for him, and moves that he be admitted to file a power of attorney constituting him agent for the defendant, which the Court admit, and the power of attorney is accordingly filed.

William Buell
vs.
Daniel Jones.

Dr. Solomon Jones further represents to the Court that he only appears this day to enter appearance for the defendant, who is prevented from appearing in person by sickness in his family, and therefore prays that the Court will put off and continue this cause over till the next term.

The Court, therefore, with consent of the plaintiff, personally present in Court, order that this cause shall lay over and be continued till the next term.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendants having been duly called, do not appear.

On motion of the plaintiff, it is ordered that this cause be continued and lay over till the next term, and that the defendants do appear on the second day of the said next term and then answer to the declaration now filed.

William Buell
vs.
Marcy Buell,
executrix, and
Bemsley Buell,
executor to the
estate of Timothy
Buell, deceased.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant appeared.

Oliver Sweet
vs.
Peet Seelye.

Ordered to lay over and be called again to-morrow.

Terence Smith
vs.
John Man.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been duly called does not appear.

It is therefore ordered that a default be entered against him.

Simeon Covill
vs.
Joseph Griffin.

William Fraser
vs.
William Robertson

The plaintiff filed declaration.
The defendant appeared.
Ordered to lay over till Friday, the 8th inst.

William Robison
vs.
Jacob Carns.

The Sheriff returned the writ.
The plaintiff appeared and filed declaration.
The defendant appeared.

John McKinivan
vs.
Henry Bolton.

The Sheriff returned the writ.
The plaintiff, John McKinivan, being deceased since the institution of this suit, Christy McKinivan, his widow and relict, is allowed to appear as plaintiff and support the suit, and accordingly she appeared and filed declaration.
The defendant appeared.

Justus Sherwood
vs.
Samuel Adams.

The plaintiff appears in person.
The defendant having been duly called does not appear.
It is therefore ordered, on the motion and request of the plaintiff, that this cause shall lay over, and be called again on Friday, the eighth day of this present month, November, in order that the defendant may have an opportunity to appear.

Simeon Covill
vs.
Abel & James
Harrington.

The plaintiff appears in person.
The defendants having been duly called do not appear.
The plaintiff represents to the Court that on the twenty-second day of May now last past, he obtained in this Honorable Court a judgment of default against the defendant; that after having been duly called on this day, they (the defendants) do still continue to make default, and that he therefore humbly prays that this Honourable Court will proceed to give final judgment against the defendants for the sum demanded in his declaration, with cost of suit.

It is therefore ordered that a jury be immediately impanelled to try the merits of this cause, and that the plaintiff do give the special matter in evidence to the jury, and accordingly the jury impanelled and sworn to try the issue of this cause were:

- | | |
|-----------------------|-------------------|
| 1. Frederick Weaver. | 7. Jacob Alick. |
| 2. Farquhar McDonell. | 8. Philip Walter. |
| 3. Peter Fetterly. | 9. Jacob Merkle. |
| 4. Frederick Bouck. | 10. Jacob Weagar. |
| 5. Jacob Garlouch. | 11. Henry Merkle. |
| 6. John Shell. | 12. Henry Stata. |

Evidence on the part of the plaintiff: Doctor Solomon Jones.

The jury, after hearing the evidence produced in this cause and seeing the exhibits filed in the same, without retiring from the bench say by their foreman, Jacob Weagar, that they find a verdict for the plaintiff of twenty pounds, and so they say all, and with costs.

The Court having heard and considered the verdict of the jury, do confirm the same and order and adjudge that the defendant do pay the plaintiff the said sum of twenty pounds, with costs of suit, to be taxed.

The plaintiff appears and enters retraxit.

Simeon Covill
vs.
Stephen Merick.

The parties having been duly called and neither of them appearing, it is ordered that this cause be dismissed.

Hugh Ross
vs.
Thomas Sherwood.

The plaintiff appears in person.

The defendant having been duly called does not appear.

Robert McGregor
vs.
Robert Gordon.

The plaintiff filed a note of hand, or promissory note, of the defendant, bearing date the twenty-third day of June, which was in the year of our Lord one thousand seven hundred and ninety, for the sum of nineteen pounds, five shillings and sevenpence, Halifax currency.

The plaintiff represents to the Court that in the last term, to wit, on the twenty-second day of May now last, he obtained a default against the defendant, that whereas the defendant upon being again called this day does still make default, therefore he humbly prays that this Honorable Court will proceed to give final judgment in this cause.

The Court therefore order that a jury be immediately impanelled to try the merits of this cause, and accordingly the jury impanelled and sworn to try the issue of this cause were:

- | | |
|-----------------------|--------------------|
| 1. Alexander McDonell | 7. Henry Merkle. |
| 2. Jacob Dorin. | 8. Peter Fetterly. |
| 3. Peter Brouse. | 9. John Shell. |
| 4. Gideon Adams. | 10. Henry Stata. |
| 5. Caleb Seamen. | 11. Jacob Weagar. |
| 6. Joseph Loucks. | 12. Adam Empey. |

The jury having seen the exhibits filed in this cause, without retiring from the bench, say by Gideon Adams, their foreman, that they find a verdict for the plaintiff for the sum of nineteen pounds, five shillings and sevenpence, Halifax currency, with costs, and so they say all.

The Court having heard and considered the verdict of the jury do confirm the same, and order and adjudge that the defendant do pay to the plaintiff the said sum of nine-

teen pounds, five shillings and sevenpence, Halifax currency, with costs of suit to be taxed.

Charles Bennitt
vs.
Thomas Stratton.

The Sheriff returned the writ.

The plaintiff appears, and filed declaration by permission of the Court.

The defendant appears, and moves the Court that he may be permitted to file plea to the plaintiff's declaration, and plea in abatement to the writ of attachment sued out by the plaintiff, in this action, as also the proceedings in an action commenced on the tenth day of March, in the year of our Lord one thousand seven hundred and ninety-two.

The plaintiff moves that he may be permitted to file answer to the defendant's motion, which the Court accordingly grant.

The Court will consider of this and give judgment thereupon to-morrow.

The Court adjourned till to-morrow at nine o'clock in the forenoon.

THURSDAY, 7th NOVEMBER, 1793.

Present: The same Judges.

William Fraser
vs.
Thomas & James
Boyd.

The plaintiff appears and enters retraxit.

Charles Bennitt
vs.
Thomas Stratton.

The Court having considered the defendant's motion for filing plea to the declaration and plea in abatement, and the plaintiff's answer and objections to the same being filed, are of opinion that the plaintiff should have been served with a copy of each of the said pleas, that he might have prepared his answer or objections to each, and whereas the said pleas appears to have been drawn up by counsel or attorney, which the plaintiff cannot be supposed to be able to answer, having neither counsel or attorney to do it. It would therefore be a hardship upon the plaintiff to proceed to a judgment on the abatement in this situation of the case. The Court do therefore grant the plaintiff's request made in his answer to the defendant's motion of yesterday, and order that this cause be put off till the next term, in order that the plaintiff may obtain counsel.

Oliver Sweet
vs.
Peet Seelye.

The plaintiff appears.

The defendant appears and saith that he never made any promise to the plaintiff as set forth in the declaration, and that he is in no manner indebted to the plaintiff, and prays that the truth may be inquired of.

The Court do therefore order that a jury be impanelled to try the issue joined in this cause, and accordingly the jury impanelled and sworn to try the issue joined between the parties in this cause were:

- | | |
|--------------------|-------------------------|
| 1. Alexander Rose. | 7. Peter Fetterly. |
| 2. Jacob Carns. | 8. Adam Empey. |
| 3. Gideon Adams. | 9. Joseph Loucks. |
| 4. Jacob Alick. | 10. Alexander McDonell. |
| 5. Henry Merkle. | 11. Philip Walter. |
| 6. Peter Brouse. | 12. John Merkle. |

Evidence sworn on the part of the plaintiff, viz.: 1, Caleb Seamen; 2, Simeon Covill, Esquire; 3, Doctor Solomon Jones; 4, Justus Sherwood, Esquire; 5, Allan Paterson, Esquire.

The jury having heard the declaration and plea in this action, and having heard the evidence and the parties respectively, retire to consider of the verdict under the charge of Nicholas Mosher, bailiff.

The plaintiff appears.

The defendant having been duly called does not appear.

Simeon Covill
vs.
Hezekiah Mosher.

The jury having returned into Court say by Gideon Adams, their foreman, that they find a verdict for the plaintiff for the sum of twelve pounds, ten shillings, Halifax currency, with costs, and so they say all.

Oliver Sweet
vs.
Peet Seelye.

The Court do confirm the verdict of the jury and order and adjudge that the defendant shall pay to the plaintiff the said sum of twelve pounds, ten shillings, with costs of suit to be taxed.

The plaintiff represents to the Court that he obtained a default against the defendant in the last term, that since the said last term he has with the defendant submitted the cause to arbitrators, who have made an award thereupon, which award he hath now here in court to show, and therefore prays that the submission may be made a rule of Court and that judgment may be entered up against the defendant upon the award.

Simeon Covill
vs.
Hezekiah Mosher.

The Court grant the prayer of the plaintiff and make the submission a rule of Court, and order that the plaintiff do file the award.

The plaintiff accordingly filed the award and a promissory note from the defendant to the plaintiff.

Whereupon the Court do order and adjudge that the defendant do pay to the plaintiff the sum of twelve pounds, two shillings and one penny halfpenny, being the balance

due on the sum contained in the said promissory note and the interest thereon due, after deducting from the amount and interest contained in the said note the sum of five pounds, eighteen shillings and twopence halfpenny, allowed to the defendant by the award, and the Court further condemn the defendant in costs of suit to be taxed.

Terence Smith
vs.
John Man.

On motion of the plaintiff's agent the Court do order that a default be entered against the defendant.

The Court adjourned until to-morrow at eight o'clock in the forenoon.

FRIDAY, 8th NOVEMBER, 1793.

The Court met pursuant to adjournment.
Present: The same Judges.

Robert McGregor
vs.
John Bryan.

The plaintiff appears.

The defendant having been duly called does not appear, therefore, on motion of the plaintiff, it is ordered that a default be entered against the defendant.

Joseph Robinson
vs.
John Rorabach &
Catherine Rorabach.

The plaintiff appears.

The defendants appear.

On motion of the defendants, and with consent of the plaintiff, it is ordered that this cause be submitted to arbitration, and accordingly the parties, plaintiff and defendants, in this cause have mutually chosen Justus Sherwood, Ephraim Jones, of Augusta, Esquires, and Lieutenant Gideon Adams, of Augusta, aforesaid, to be arbitrators, who shall meet and make an award upon the dispute now subsisting between the parties in this suit, which award shall be returned into court at the next term, to remain as a record in this suit, and after being approved of by the judges shall be final and binding upon the parties, plaintiff and defendants.

Joseph (his X mark) Robinson, plaintiff.

John Rodenbach.

Catherine (her X mark) Rorabach.

Joseph Robinson
vs.
Jacob Bonisteel &
Christian Bonisteel.

The plaintiff appears.

The defendants appear.

On motion of the defendants, and with consent of the plaintiff, it is ordered that this cause be submitted to arbitration, and accordingly the parties, plaintiff and defendants, in this cause have mutually chosen Justus Sherwood and Ephraim Jones, of Augusta, Esquires, and Lieutenant Gideon Adams, of Augusta, aforesaid, to be

arbitrators, who shall meet and make an award upon the dispute now subsisting between the parties in this suit, which award shall be returned into Court at the next term to remain as a record in this suit, and after being approved of by the judges shall be final and binding upon the parties, plaintiff and defendants.

Joseph (his X mark) Robinson.
Jacob (his X mark) Bonisteel.
Christian (his X mark) Bonisteel.

The Sheriff returned the writ.

The plaintiff appears and files declaration.

The defendant appears, and says that he is not prepared for trial, having no counsel to instruct him, and therefore prays that time may be granted him till next term.

Charles Bennett
vs.
Thomas Stratton.

The Sheriff returned the writ.

The parties, plaintiff and defendant, having been duly called neither of them appear.

It is therefore ordered that this cause be dismissed.

Samuel Swerdfege
vs.
Alexander Campbell.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been duly called does not appear.

It is therefore ordered, on motion of the plaintiff, that a default be entered against the defendant.

Simeon Covill
vs.
Joseph Knapp.

The Sheriff returned the writ.

The plaintiff appears and filed declaration.

The defendant having been duly called does not appear.

It is therefore ordered, on motion of the plaintiff, that a default be entered against the defendant.

Simeon Covill
vs.
Daniel Shipman.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant appears.

John Hoople
vs.
John Storing.

The plaintiff appears.

The defendant having been duly called does not appear.

The Court therefore order a default to be entered up against him, and that a copy thereof be served upon him.

Justus Sherwood
vs.
Samuel Adams.

The plaintiff appears and prays that this cause may lay over and be continued till next term, which prayer the Court accordingly grant.

Joseph White
vs.
Samuel Shipman.

The plaintiff filed a promissory note from the defendant.

William Fraser
vs.
William Robertson.

The defendant appears and saith that he is not indebted to the plaintiff as set forth in the declaration, and prays that the truth may be inquired of.

The Court therefore order that a jury be impanelled to try the issue joined between the parties in this cause, and that the special matter be given in evidence to the jury. Accordingly the jury impanelled and sworn to try the issue joined in this cause were:

- | | |
|--------------------|------------------------|
| 1. Jacob Weagar. | 7. Adam Empey. |
| 2. Jacob Alick. | 8. Jacob Merkle. |
| 3. Jacob Carns. | 9. Jacob Garloch. |
| 4. Henry Merkle. | 10. Frederick Weaver. |
| 5. John Merkle. | 11. Farquhar McDonell. |
| 6. Peter Fetterly. | 12. John Shell. |

The jury having heard the parties respectively and seen the exhibits filed in this cause, retire to consider of their verdict under charge of Nicholas Mosher, bailiff.

The jury having returned into court say by Jacob Weagar, their foreman, that they find verdict for the plaintiff for the sum of thirty-eight pounds, one shilling and sixpence, Halifax currency, with costs, and so they say all.

The Court do confirm the verdict of the jury and order and adjudge that the defendant do pay to the plaintiff the said sum of thirty-eight pounds, one shilling and sixpence, with costs of suit to be taxed.

William Robison
vs.
Jacob Carns.

The defendant appears and says that he is in no wise indebted or owing to the plaintiff as set forth in the declaration, and prays the truth may be inquired of.

Ordered for trial to-morrow.

John Hoople
vs.
John Storing.

The plaintiff comes here into court and says that the defendant hath satisfied him, and moves that he may be permitted to enter a retraxit, which is accordingly granted.

Justus Sherwood
vs.
Samuel Adams.

The plaintiff comes here into court in person and prays that the suit now at issue between the plaintiff and defendant may on some day at the next weekly sessions in this term be brought to a final decision, by judgment on the default already found against the defendant, and that the defendant be served with a copy of the default, at the same time acquainting him with the day this Honorable Court shall judge proper to appoint for the trial.

The Court, upon consideration of the contempt that the defendant has shown in not attending, and on consideration of the plaintiff's motion and prayer, do determine that Tuesday, the twelfth day of this present month, shall be the day on which they will proceed to put a period

to this tedious suit. The Court order that a copy of this rule, with a copy of the default entered against the defendant, and a copy of the plaintiff's motion be served on the defendant, without any loss of time.

On motion of the defendant, and with consent of the plaintiff, it is ordered that this cause be submitted to arbitration, and accordingly the plaintiff hath chosen on her part David MacFall, of the County of Grenville, gentleman, and the defendant hath chosen on his part Alexander Campbell, of the town of New Johnstown, Esquires, to be arbitrators for the decision of the matter now in dispute between them, the said parties, plaintiff and defendant, and in case the said arbitrators cannot agree upon an award they shall choose an umpire, and the Court do order that the said arbitrators shall, if they can agree, make an award in writing, or, if they cannot agree, then the umpire by them to be chosen shall make an umpirage in writing, which award or umpirage so made and written shall be returned into this court at the next term to remain as a record in this suit, and after the same shall have received the approbation of the judges the said award or umpirage shall be final and binding on the parties in this suit. This rule to be served on the said arbitrators that they may proceed accordingly.

Christy (X) McKinivan.
Henry Bolton.

Christy McKinivan
widow and relick of
John McKinivan,
deceased, and
executrix of his
last will and
testament,
vs.
Henry Bolton.

The plaintiff appears and enters retraxit.

William Loucks
vs.
John Storing.

The Court adjourned till to-morrow at nine o'clock in the forenoon.

SATURDAY, 9th NOVEMBER, 1793.

The Court met pursuant to adjournment.

Present: The same Judges.

The parties appear.

The Court order that a jury be impanelled to try the issue joined in this cause, and accordingly the jury impanelled and sworn to try the issue joined between the parties in this suit were:—

William Robison
vs.
Jacob Carns.

- | | |
|----------------------|--------------------|
| 1. Jacob Dorin. | 7. John Merkle. |
| 2. Peter Brouse. | 8. Alexander Rose. |
| 3. Jacob Merkle. | 9. Gideon Adams. |
| 4. Nicholas Frymire. | 10. Philip Walter. |
| 5. Frederick Weaver. | 11. John Shell. |
| 6. Jacob Weagar. | 12. Henry Merkle. |

Evidence sworn on the part of the defendant, viz.: 1, Ezekiel Rose; 2, James Main.

The jury having heard the parties respectively and the evidence in this cause retire to consider of their verdict under charge of John Bradshaw, bailiff.

The jury having returned into court say by Gideon Adams, their foreman, that they find a verdict for the defendant for the price of the mare, with costs of suit, and for the plaintiff four shillings for the bridle delivered with the mare, and so they say all.

The Court having considered the verdict of the jury do confirm the same, and do order and adjudge that the defendant do pay to the plaintiff the said sum of four shillings, and that the plaintiff do pay costs of suit to be taxed.

Charles Bennitt
vs.
Thomas Stratton.

The plaintiff appears and files a note of hand.

The defendant appears.

The Court over rule the motion and prayer of the defendant, of yesterday, and order that he do give in plea to the declaration.

The defendant again moves the Court for time.

Whereupon the Court are of opinion that from the nature of this action that no time can be granted, it being brought upon a plain promissory note, and therefore order that he plead instanter, and that a jury be impanelled to try the issue.

And the defendant comes into court and says that the note for which this action is instituted has been paid.

Whereupon the Court order a jury to be impanelled, and accordingly the jury impanelled to try the issue of this cause, were:—

- | | |
|-----------------|-----------------------|
| 1. Jacob Dorin. | 7. Peter Brouse. |
| 2. Adam Empey. | 8. Peter Fetterly. |
| 3. John Merkle. | 9. Alexander McDonell |
| 4. John Shell. | 10. Henry Merkle. |
| 5. Jacob Carns. | 11. Henry Stata. |
| 6. Jacob Alick. | 12. Frederick Weaver. |

The jury having heard the parties respectively and seen the exhibits filed in this cause, retire to consider of their verdict under charge of John Bradshaw, bailiff.

The jury having returned into Court say by Alexander McDonell, their foreman, that they find a verdict for the plaintiff for the sum of fifteen pounds, Halifax currency, with lawful interest thereon, from the fifteenth day of June, which was in the year of our Lord one thousand seven hundred and ninety-two, and costs, and so they say all.

The Court confirm the verdict of the jury and condemn the defendant to pay to the plaintiff the said sum of fifteen pounds, Halifax currency, with lawful interest thereon, from the fifteenth day of June, which was in the year of our Lord one thousand seven hundred and ninety-two, and costs of suit to be taxed.

The plaintiff appeared and filed declaration.

Joseph Anderson
vs.
David Bissell.

The defendant having been duly called does not appear, therefore it is ordered on motion of the plaintiff that a default be entered against the defendant.

The Court adjourned till Monday, the 11th of November instant, at 9 o'clock in the forenoon.

MONDAY, 11th NOVEMBER, 1793.

Present: The same Judges.

Thomas Petters
vs.
Major Watson.

The plaintiff appears.

The defendant having been duly called does not appear.

The plaintiff filed a promissory note from the defendant, and prays that judgment may be entered up against the defendant by default, for the sum demanded in and by the plaintiff's declaration.

Whereupon the Court do order and adjudge that the defendant do pay to the plaintiff the sum of three pounds, four shillings and sevenpence, Halifax currency, with lawful interest thereon from the twenty-third day of November, which was in the year of our Lord one thousand seven hundred and ninety-two, till actual payment, and costs of suit to be taxed.

The plaintiff appears.

Joseph White
vs.
Joseph Griffin.

The defendant having been duly called does not appear.

The plaintiff filed a promissory note from the defendant for the sum of fifteen pounds, ten shillings, and prays that whereas the defendant at the return of the writ made default which was ordered to be entered against him, and having been duly called again on this day does still continue to make default, that therefore judgment may be entered up against him for the amount of the said note of hand with costs of suit.

Whereupon the Court do condemn the defendant to pay to plaintiff the sum of fifteen pounds, ten shillings, Halifax currency, with costs of suit to be taxed.

The plaintiff appears.

Simeon Covill
vs.
Joseph Griffin.

The defendant having been duly called does not appear.

The plaintiff filed two promissory notes from the defendant, viz.: one for nine pounds, Halifax currency, and

the other for six pounds, like money, making together the sum of fifteen pounds.

The plaintiff represents to the Court that he has in this term obtained a default against the defendant in this action, and that whereas the defendant on being duly called this day does still continue to make default, he prays that judgment may be entered up against the defendant for the principal and interest contained in the two notes filed in this cause.

Whereupon the Court condemn the defendant to pay to the plaintiff the sum of fifteen pounds, Halifax currency, with lawful interest on six pounds thereof from the eleventh day of February in this present year of our Lord one thousand seven hundred and ninety-three till actual payment, and costs of suit to be taxed.

Simeon Covill
vs.
Joseph Knapp.

The plaintiff appears and filed a promissory note from the defendant for the sum of twenty-nine pounds and sevenpence, Halifax currency.

The defendant having been duly called does not appear.

The plaintiff represents to the Court that he has obtained judgment of default in this term against the defendant, and that on his being called again on this day does still continue to make default, that therefore he prays final judgment may be entered up against the defendant for the sum demanded in and by the declaration.

Whereas the plaintiff by his declaration has demanded damages, the Court order that a jury be impanelled to try the merits of this cause.

And accordingly the jury impanelled to try the issue of this cause were:—

- | | |
|--------------------|----------------------|
| 1. John Hickey. | 7. Philip Stata. |
| 2. Peter Loucks. | 8. Richard Loucks. |
| 3. Michael Cough. | 9. John Kryslar. |
| 4. Frederick Rany. | 10. George Cough. |
| 5. John Coons. | 11. Conradt Snyder. |
| 6. James Wilson. | 12. Francis Albrant. |

The jury having heard the declaration and seen the exhibits filed in this cause retire to consider of their verdict under the charge of Nicholas Mosher, bailiff.

The jury having returned into Court say by James Wilson, their foreman, that they find a verdict for the plaintiff for the sum of twenty-nine pounds and sevenpence, Halifax currency, with lawful interest thereon from the twenty-fifth day of October now last past and costs, and so they say all.

The Court do confirm the verdict of the jury and condemn the defendant to pay the plaintiff the said sum of

twenty-nine pounds and sevenpence, with the lawful interest thereon, till actual payment, with costs of suit to be taxed.

The Court adjourned till to-morrow at nine o'clock in the forenoon.

TUESDAY, 12th NOVEMBER, 1793.

Present: The same Judges.

The plaintiff appears and files a promissory note from the defendant.

William Fraser
vs.
Joseph Griffin.

The defendant having been duly called does not appear.

The plaintiff represents to the Court that he has obtained a default in this term against the defendant, and that whereas the defendant on being duly called on this day does still continue to make default, he therefore prays that judgment may be entered up against the defendant for the sum demanded in and by the declaration, with costs of suit.

Whereupon the Court condemn the defendant to pay to the plaintiff the sum of four pounds, nine shillings and threepence halfpenny currency, with costs of suit to be taxed.

The plaintiff personally appears in court and represents that whereas he obtained from this Honorable Court a default against the defendant with a day fixed for the hearing of this cause; that a copy of the said default with a copy of the rule for the appointing the day for hearing the cause, has been duly served upon the defendant, who still neglects to appear. The plaintiff therefore prays the Honorable Court will proceed on the cause at issue and bring it to a decision agreeable to the above-mentioned rule.

Justus Sherwood
vs.
Samuel Adams.

This being an action for damages, the court upon consideration of the merits of the case, are of opinion that the plaintiff ought to recover damages; but as the Court cannot know what damages the plaintiff hath sustained, it is therefore ordered that a jury be summoned to assess the damages in this suit, and that a venire do immediately issue for that purpose, returnable to-morrow (the thirteenth instant) at nine o'clock in the forenoon.

The plaintiff appears.

The defendant having been duly called does not appear.

The plaintiff filed a promissory note from the defendant, and an account against the defendant, for divers goods, wares, and merchandise. The plaintiff represents

Simeon Covill
vs.
Daniel Shipman.

to the Court that he hath in this term obtained a default against the defendant, and that on his having been duly called on this day does still continue to make default. Wherefore he prays that judgment may be entered up against the defendant for the sum contained in the declaration. The plaintiff having in his declaration laid his action for damages, the Court do therefore order that a jury be impanelled to try the issue of this cause, and accordingly the jury impanelled and sworn to try the issue of this cause were:—

- | | |
|---------------------|---------------------|
| 1. Michael Cough. | 7. Peter Loucks. |
| 2. Francis Albrant. | 8. James Wilson. |
| 3. Conradt Snyder. | 9. Frederick Rany. |
| 4. George Cough. | 10. John Coons. |
| 5. John Hickey. | 11. John Kryslor. |
| 6. Jacob Ross. | 12. Richard Loucks. |

The jury having heard the declaration and proceeding in this cause, and having seen the exhibits filed in this cause, retire to consider of their verdict under charge of Nicholas Mosher, bailiff.

Joseph Anderson
vs.
David Bissell.

The plaintiff appears and filed a promissory note from the defendant.

The defendant having been duly called does not appear.

The plaintiff represents to the Court that he hath in this term obtained a default against the defendant, that whereas on calling the defendant on this day he still continues to make default, he prays that final judgment may be entered up against the defendant for the sum demanded in the declaration.

Whereupon the Court do order and adjudge that the defendant shall pay to the plaintiff the sum of ten pounds, seven shillings and sevenpence, Halifax currency, and lawful interest thereon from the twenty-eighth day of June last, with costs of suit to be taxed.

Simeon Covill
vs.
Daniel Shipman.

The jury having returned into court, say by John Kryslor, their foreman, that they find a verdict for the plaintiff for the sum of fifteen pounds, eight shillings and elevenpence halfpenny, Halifax currency, and costs, and so they say all.

The Court confirm the verdict of the jury and condemn the defendant to pay to the plaintiff the said sum of fifteen pounds, eight shillings and eleven-pence halfpenny, Halifax currency, with costs of suit to be taxed.

The Court adjourned till to-morrow at nine o'clock in the forenoon.

WEDNESDAY, 13th NOVEMBER, 1793.

Present: The same Judges.

The plaintiff appears in person.

The defendant having been duly called does not appear.

The plaintiff filed affidavit that the defendant has been personally served with a copy of the default, and a copy of the rule of Court appointing a day for hearing this cause.

The Sheriff returned the venire and panel of the jury.

The jury impanelled and sworn to try and assess the damages in this cause were:—

J. McDonald, *J.C.P.*

1. Malcolm McMartin, Esq.
2. Mr. John Coons.
3. Thomas Fraser, Esq.
4. John Jones, Esq.
5. Mr. James Campbell.
6. Allen Paterson, Esq.
7. Peter Drummond, Esq.
8. Joseph Anderson, Esq.
9. Mr. William Fraser, Jun.
10. Mr. Peter Loucks.
11. Mr. James Wilson.
12. William Fraser, Esq.

The jury having seen the proceedings and the exhibits filed in this cause, retire to consider of their verdict, under charge of Nicholas Mosher, bailiff.

The jury having returned into court say by Joseph Anderson, Esquire, their foreman, that, the defendant not appearing to support his accusation against the plaintiff, the jury are unanimously of opinion that the plaintiff is not guilty, and award for the said plaintiff five hundred pounds damages, with costs of suit, and so they say all.

The Court do confirm the verdict of the jury and condemn the defendant to pay to the plaintiff the said sum of five hundred pounds, with costs of suit to be taxed.

The Court adjourned till next term.

J. McDONELL, *J.C.P.*

JOHN MUNRO, *J.C.P.*

17th JANUARY, 1794.

At a COURT OF COMMON PLEAS, holden at the Town of Cornwall, in and for the Eastern District of the Province of Upper Canada, on Friday, the seventeenth day of Jan-

Justus Sherwood
vs.
Samuel Adams.

The words—
that the plaintiff,
interlined.
J. McDonell, *J.C.P.*

uary, in the year of our Lord one thousand seven hundred and ninety-four.

Present: The Honorables John McDonell and John Munro, Esquires.

Rice Honeywell
vs.
Ezekiel Spicer.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been duly called does not appear.

The plaintiff filed a written obligation from the defendant to him, bearing date the first day of January, in the year of our Lord one thousand seven hundred and ninety-three, and moves the Court that a default may be entered against the defendant, whereupon the Court do order that a default be entered against the defendant.

Allan Paterson
vs.
Edward Stooks.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been duly called does not appear.

Wherefore upon motion and prayer of the plaintiff, it is ordered by the Court that a default be entered up against the defendant. The plaintiff filed four notes of hand, given by the defendant as set forth in the declaration.

Richard Wilkinson
vs.
Christian Dillebachy.

The Sheriff returned the writ.

The plaintiff appears and moves the Court that he may be permitted to enter a retraxit, which the Court accordingly grant.

Richard Wilkinson
vs.
David Jacob.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant appears.

The plaintiff moves the Court that he may be permitted to enter a retraxit of this suit, which the Court accordingly grant.

Simeon Covill
vs.
Truelove Butler.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been duly called does not appear, wherefore on motion and prayer of the plaintiff, it is ordered that a default be entered against the defendant, and that this cause be continued over till the next term.

Donald McLean
vs.
Alexander McDonell.

The Sheriff returned the writ.

The plaintiff and defendant having been duly called, neither of them appear, it is therefore ordered that this cause be dismissed.

Robert McGregor
vs.
John Bryan.

The plaintiff appears and moves the Court that he may be permitted to enter a retraxit of the suit, which the Court accordingly grant.

The plaintiffs appear, by Mr. John Beikie, one of the partners of the said firm of Wilkinson & Beikie, and move the Court that he may be permitted to enter a retraxit of this suit, which the Court accordingly grant, and order this cause to be dismissed.

Wilkinson &
Beikie
vs.
Joseph Falkner.

The plaintiff appeared and filed their account against defendant.

The defendant having been duly called does not appear.

Wilkinson &
Beikie
vs.
John McCredy.

Whereupon the plaintiffs represent to the Court that they obtained a default against the defendant in the last term, and whereas the said defendant does still continue to make default, they, the said plaintiffs, therefore humbly pray that final judgment may be entered up against the defendant for the sum demanded in and by the declaration, with the costs accrued in this suit.

Ordered to lay over till to-morrow.

The plaintiff appeared in person.

The defendant appeared in person.

Charles Bennett
vs.
Thomas Stratton.

Ordered that this cause be set down and continued over for hearing on Monday next, the twentieth instant.

The plaintiff appears by his agent, Jacob Farrand, Esquire.

Terence Smith
vs.
John Man.

The defendant having been duly called does not appear.

Ordered by the Court that this cause be continued over and called again on Monday next, the twentieth January instant.

On motion of Joseph Anderson, of Augusta, Esquire, he is permitted to file a power of attorney constituting him agent for the plaintiff, and he is allowed by the Court to appear as such.

Joseph White
vs.
Samuel Shipman.

The defendant having been duly called does not appear, wherefore on motion and prayer of Joseph Anderson, Esquire, agent for the plaintiff, it is ordered that default be entered up against the defendant.

The Court adjourned till to-morrow at ten o'clock in the forenoon.

SATURDAY, 18th JANUARY, 1794.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiff appears and prays that he may be permitted to enter a retraxit of this cause, which prayer the Court accordingly grant, and order that this suit be dismissed.

William Buell
vs.
Daniel Jones.

William Buell
vs.
Mercy Buell,
executrix, and
Bemsley Buell,
executor to the
estate of the late
Timothy Buell,
deceased.

The plaintiff appears in person.

The defendants having been duly called do not appear, therefore on motion and prayer of the plaintiff, it is ordered that default be entered up against them.

John Beikie
vs.
John McCredy.

The plaintiff appears in person.

The defendant having been duly called does not appear. Ordered by the Court that this cause lay over and be called again on Monday next.

Christy Mac-
Kinivan
vs.
Henry Bolton.

Ordered by the Court to lay over and be called on Monday next, the twentieth instant.

Wilkinson &
Beikie
vs.
John McCredy.

Ordered by the Court to lay over till Tuesday, the twenty-first instant.

The Court adjourned till Monday next, the twentieth instant, at ten o'clock in the forenoon.

MONDAY, 20th JANUARY, 1794.

The Court met pursuant to adjournment.

Present: The same Judges.

Allan Paterson
vs.
Edward Stooks.

The plaintiff appeared in person.

The defendant having been duly called does not appear.

The plaintiff represents to the Court that whereas he has obtained a default against the defendant, in the first week of this term, and whereas the said defendant upon being duly called on this day does still continue to make default, by not appearing, he the plaintiff therefore humbly prays that this Honorable Court will order final judgment to be entered up against the defendant for the sum demanded in and by the declaration.

Whereupon the Court do order that a jury be impanelled to try the merits of this cause, and accordingly the jury impanelled and sworn to try the merits of this cause were:—

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|------------------------|-----------------------|
| 1. Edward Perry. | 7. John Smith, Jun. |
| 2. William Bruce. | 8. George Mitchel. |
| 3. Joseph Criderman. | 9. Robert McGregor. |
| 4. Jonah Wood. | 10. Joseph Fields. |
| 5. Nicholas Sillimson. | 11. Crist. Gallinger. |
| 6. James Fitchet. | 12. Peter Emer. |

The jury having seen the exhibits filed in this cause, and having heard the plaintiff in support of his declaration, without retiring from the Bench, say by their fore-

man, Robert McGregor, that they find a verdict for the plaintiff for the sum of twenty-two pounds, fifteen shillings, Halifax currency, with costs of suit, and so they say all.

The Court having heard and seen the verdict of the jury, do confirm the same and condemn the defendant to pay to the plaintiff the sum of twenty-two pounds, fifteen shillings, Halifax currency, with costs of suit to be taxed.

The plaintiff appeared in person.

The defendant having been duly called does not appear.

John Beikie
vs.
John McCredy.

The plaintiff filed a note of hand from the defendant, and represents to the Court that whereas he (the plaintiff) did obtain a default against the defendant in the last term, and whereas the said defendant, upon being duly called on this day, does still continue to make default, by not appearing, he (the plaintiff) therefore humbly prays that this Honorable Court will order final judgment to be entered up against the said defendant for the amount of the said note, with lawful interest as mentioned in the face of the said note.

Whereupon the Court do condemn the said defendant to pay to the plaintiff the sum of seven pounds, ten shillings and sevenpence, Quebec currency, with lawful interest thereon from the thirteenth day of August, in the year of our Lord one thousand seven hundred and ninety-two, till actual payment, together with costs of suit to be taxed.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

Richard Wilkinson
vs.
John MacGrigor.

The defendant appears and confesses that he is indebted to the plaintiff as set forth in the declaration, and confesses judgment in this suit.

The plaintiff filed a promissory note from the defendant, and prays that final judgment may be entered up against the defendant.

Whereupon the Court, having considered the confession of the defendant, do order and adjudge that he, the said defendant, do pay to the plaintiff the sum of eight pounds, fifteen shillings and tenpence halfpenny, Quebec currency, with lawful interest thereon from this day till actual payment, together with costs of suit to be taxed.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

Richard Wilkinson
vs.
William Falkner.

The defendant having been duly called does not appear.

The plaintiff filed an account current with the defendant.

On motion and prayer of the plaintiff, it is ordered that a default be entered up against the defendant.

Richard Wilkinson
vs.
William Falkner.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration, and a promissory note of the defendant, bearing date the second day of February, in the year of our Lord one thousand seven hundred and ninety.

The defendant having been duly called does not appear.

Whereupon, on motion and prayer of the plaintiff, it is ordered that a default be entered up against the defendant.

Christy
MacKinnivan
vs.
Henry Bolton.

Ordered to lay over and be called again to-morrow.

John Hay
vs.
Alexander Grant.

The Sheriff returned the writ.

The plaintiff appears and files declaration.

The defendant appears and acknowledges that he is justly indebted to the plaintiff in the sum demanded in and by the declaration.

The plaintiff filed a promissory note of the defendant, and prays that final judgment may be entered up against the defendant for the sum demanded in and by the declaration.

Whereupon the Court in consideration of the defendant's acknowledgement of the debt, do condemn him to pay to the plaintiff the sum of three pounds, eighteen shillings and fourpence halfpenny, Quebec currency, with costs of suit to be taxed.

Terence Smith
vs.
John Man.

The plaintiff by his agent, Jacob Farrand, Esquire, moves the Court, that whereas the Court were pleased to grant a default against the defendant in the last term, and whereas he (the said defendant) has not appeared, either by an agent, an attorney, or in person at this term, that therefore final judgment may be entered up against the said defendant.

Order by the Court to lay over till to-morrow.

Charles Bennitt
vs.
Thomas Stratton.

The plaintiff appeared.

The defendant appeared and moves the Court that he be permitted to file a plea, in abatement of the writ of attachment, filed by the plaintiff in this suit in the last term, which motion the Court admit, and accordingly the said plea in abatement is filed.

The plaintiff filed answer to the plea in abatement.

The defendant filed replication to plaintiff's answer to the plea in abatement.

The Court adjourned for two hours.

The Court met pursuant to adjournment

Present: The same Judges.

The Court with respect to the law-issue, raised in this suit by the plea in abatement, the plaintiff's answer thereto and the defendant's replication to the answer, are of opinion that the matter advanced by the defendant is not sufficient to warrant the quashing the writ of attachment, and therefore order that the defendant do plead to the declaration.

And accordingly the defendant filed plea to the merits.

The plaintiff filed replication.

The Court adjourned till to-morrow at ten o'clock in the forenoon.

TUESDAY, 21st JANUARY, 1794.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiff and defendant both appeared in court and say they have mutually agreed between themselves to submit the decision of this, their suit, to arbitration, and therefore together, they move and pray the Court that they, the said parties, may be permitted to withdraw the action, to be submitted as aforesaid, which prayer the Court do acquiesce in and grant. And accordingly, he, the said Charles Bennitt, the plaintiff, hath chosen on his part Richard Wilkinson, of Charlottenburg, Esquire, and Andrew Wilson, of the Town of Cornwall, Esquire, and he, the said Thomas Stratton, the defendant, hath chosen on his part Mr. Robert MacGregor, of Cornwall, aforesaid, merchant, and Mr. John Emerson, of Cornwall, aforesaid, to be arbitrators to this suit, to arbitrate and decide upon all matters, differences, and controversies relative to and respecting this suit, now existing between the said parties, plaintiff and defendant, which said arbitrators shall meet, for the above purpose, on some convenient day, by themselves to be appointed, between this and the next ensuing term, and thereof and every part thereof as aforesaid to decide and award, which award shall be made in writing under the hands and seals of the said arbitrators, and returned by the parties or either of them, into this court, on the second day of the next ensuing term, and after the said award, so to be made, written, signed, sealed and

Charles Bennitt
vs.
Thomas Stratton.

Charles Bennitt
vs.
Thomas Stratton.

returned, as aforesaid, shall have received the approbation of the judges of this Court, the same award shall then be entered of record in this suit, and be final and binding on the aforesaid parties, the plaintiff and defendant. And in case the aforesaid arbitrators or the greater number of them, do not agree upon an award, then they, the aforesaid arbitrators, shall choose an umpire, who shall, after having been duly chosen by the arbitrators as aforesaid, solely, be vested with the same powers and authorities as are herein before given to the arbitrators aforesaid. And in case the arbitrators shall choose an umpire as aforesaid, he, the said umpire so to be chosen, as aforesaid, shall make his umpirage in writing under his hand and seal, and the same to be returned into this Court, on the second day of the next ensuing term, in the same manner as in case of an award is directed to be done, which said umpirage, in case there shall be one made, after it shall have received the approbation of the judges of this court, shall be entered of record in this suit, and be final and binding on the aforesaid parties, plaintiff and defendant. And the Court do order that the said arbitrators, and the said umpire, in case there shall be one chosen as aforesaid, before they, or any of them, enter upon their arbitration, or umpirage, shall be duly sworn by some Justice of the Peace for this Eastern District, not being one of the arbitrators, to do equal justice, according to the best of their understanding and abilities to the aforesaid parties, plaintiff and defendant, in this cause. This rule to be served, by a copy thereof, on the arbitrators, that they may proceed accordingly.

Charles Bennitt, plaintiff.
Thomas Stratton, defendant.

Christy
MacKinnivan
vs.
Henry Bolton.

This cause having by the mutual consent of the parties been submitted to arbitration under a rule of Court made in last November term, and the arbitrators having returned their award into court at this term agreeable to the above-mentioned rule, the Court having examined and maturely considered the said award, do approve of and confirm the same, except as far as the said award relates to or comprehends the costs which may have accrued in this suit, which said costs shall be taxed by the Court, and after the said costs shall be taxed by the Court the same shall be paid agreeable to the award, for so much as the Court shall find reasonably to allow, the said award ordered to be filed with the above exception.

Wilkinson &
Belkie
vs.
John McCredy.

The Court having considered the prayer of the plaintiffs and the non-appearance of the defendant, either by

himself or by an agent, do order and adjudge that the defendant shall pay to the plaintiffs the sum of two pounds, three shillings and threepence, Quebec currency, with costs of suit to be taxed.

The Court, in answer to the motion and prayer made yesterday by the plaintiff's agent, are of opinion that the defendant ought to have been made acquainted by the plaintiff, or his agent, with the suit instituted against him, and as no such notice appears to have been given, the Court do therefore order that this cause be continued over till the next term.

Terence Smith
vs.
John Man.

The cause having been submitted to arbitration, under a rule of Court made in the last term, which rule directed that the award should be returned into court at this term, which has not been done, and the parties having been duly called and neither of them appearing, the Court do therefore order this cause to be dismissed, and condemn the plaintiff in the costs to be taxed.

Joseph Robison
vs.
John Rorabach and
Catherina
Rorabach.

This cause having been submitted to arbitration, under a rule of Court made in the last term, which rule directed that the award should be returned into court at this term, which has not been done, and the parties having been duly called and neither of them appearing, the Court do therefore order this cause to be dismissed, and condemn the plaintiff in costs to be taxed.

Joseph Robison
vs.
Jacob Bonisteel
and Christy
Bonisteel.

The Court adjourned till next term.

J. McDONELL, *J.C.P.*
JOHN MUNRO, *J.C.P.*

11th APRIL, 1794.

At a COURT OF COMMON PLEAS, held at New Johnstown, in and for the Eastern District of the Province of Upper Canada, on Friday, the eleventh day of April, in the year of our Lord, one thousand seven hundred and ninety-four.

Present: The Honorables John MacDonell and John Munro, Esquires.

The Sheriff returned the writ.

Ordered to be called again on Tuesday next.

Thomas Bluard
vs.
Isaiah Cain.

The Sheriff returned the writ.

The plaintiff appears and filed declaration.

James Breaken-
ridge
vs.
Reuben Motts.

The defendant appears and denies that he is indebted to the plaintiff in the manner as set forth in the declaration.

Ordered to be set down for trial on Tuesday next.

David Cain
vs.
Bertholomew
Carley.

The Sheriff being called upon to return the writ, says that it was never delivered to him.

And the parties having been duly called neither of them appear.

It is therefore ordered that this cause be discharged and dismissed.

Joseph Anderson
vs.
Richard Hope.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been duly called does not appear.

Wherefore it is ordered on motion of the plaintiff, that a default be entered up against the defendant.

Daniel Shipman
vs.
Thomas Wood.

The Sheriff returned the writ.

The parties, plaintiff and defendant, having been duly called, and neither of them appearing, it is therefore ordered by the Court that this suit be dismissed with costs to the defendant.

Daniel Shipman
vs.
Joel Stone.

The Sheriff returned the writ.

The parties, plaintiff and defendant, having been duly called and neither of them appearing, it is therefore ordered by the Court that this suit be dismissed with costs to the defendant.

John Levingston
vs.
John Pottiar.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been duly called does not appear, wherefore, on motion of the plaintiff, it is ordered that a default be entered up against the defendant.

John Levingston
vs.
John Adam
Stinger.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant having been duly called does not appear.

Wherefore it is ordered by the Court, on motion of the plaintiff that a default be entered up against the defendant.

Vernueil Lorimier
vs.
John Levingston.

The Sheriff returned the writ.

The plaintiff appears, and moves the Court that he may be permitted to enter a retraxit, which the Court grant, and a retraxit is accordingly entered.

The Sheriff returned the writ.

The plaintiff appears and moves the Court that he may be permitted to enter a retraxit of this suit, which the Court grant, and a retraxit is accordingly entered.

Vernueil Lorimier
vs.
William Robinson.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant appeared, moves the Court that this cause be put off till next term as he cannot be prepared to come to trial in this term for want of evidence.

The Court, in answer to the defendant's motion, are of opinion that the reasons assigned by the defendant are not sufficient for putting off the trial and therefore order him to plead to the merits, and that he do enter his plea on Tuesday next, of which the defendant is to take notice.

Verneuil Lorimier
vs.
Daniel Smith.

The Sheriff returned the writ.

The plaintiff appears and moves the Court that he may be permitted to enter a retraxit of this suit, which the Court grant, and a retraxit is accordingly entered.

Verneuil Lorimier
vs.
Major Watson

The Sheriff returned the writ.

The plaintiff appears and moves the Court that he may be permitted to enter a retraxit of this suit, which the Court grant and a retraxit is accordingly entered.

Verneuil Lorimier
vs.
Benjamin Deckers.

The Sheriff returned the writ.

Nicholas Mosher, constable, appears and represents to the Court that the plaintiff was obliged to leave the Court-house to-day on account of being very sick, and therefore on the part of the plaintiff prays that this cause may be called again to-morrow.

Simeon Coville
vs.
Oliver Sweet.

The defendant being present in court agrees to the prayer made on the behalf of the plaintiff.

Wherefore the Court do order that this cause be continued over and called again to-morrow.

The Sheriff returned the writ.

The plaintiff having been called, Nicholas Mosher, constable, appears and represents to the Court that the plaintiff was obliged to leave the Court-house to-day on account of being very ill, and on the part of the plaintiff prays that this cause may be called again to-morrow.

Simeon Coville
vs.
Joseph White.

The defendant having been duly called does not appear.

The Court, in consideration of the prayer made by Nicholas Mosher on behalf of the plaintiff, do order that this cause be continued over and called again to-morrow.

William Scott
vs.
William Barton,
Joseph Barton and
John Barton.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendants appear, and the said William Barton, one of the defendants, moves the Court that he may be permitted to file his plea, which motion the Court grant, and the plea was accordingly filed.

The Court take time to consider of the issue raised by the declaration and plea filed in this cause, and will decide thereon on Monday next.

Joseph Forsyth
& Co.
vs.
Hugh Munro, Esq.

The Sheriff returned the writ.

Jacob Farrand, Esquire, appears on the part of the plaintiffs and prays that he may be permitted to file a power of attorney constituting him agent for the plaintiffs, which prayer the Court admit, and the power of attorney was accordingly filed. Mr. Farrand, as agent for the plaintiffs, filed declaration.

The defendant appeared.

Ordered by the Court that this cause be called again to-morrow.

The Court adjourned till to-morrow at nine o'clock in the forenoon.

SATURDAY, 12th APRIL, 1794.

The Court met pursuant to adjournment.

Present: The same Judges.

Justus Sherwood
vs.
Samuel Adams.

Personally appeared the defendant, Samuel Adams, and filed motion for an appeal of this suit.

The Court take time till Monday next to consider of the same.

Charles Bennitt
vs.
Thomas Stratton.

The plaintiff appeared and filed a certified copy of an award of the arbitrators appointed in this cause by rule of Court made in the last term.

The plaintiff moves the Court that he may be permitted to bring forward evidence to prove that the original award has been stolen or maliciously destroyed, as set forth in the certified copy by him filed.

Which motion the Court admit and order the evidence to be brought forward accordingly.

Whereupon personally appear Roderick MacLeod, of the County of Glengarry, potash boiler, and being sworn to give evidence in this suit depose and saith, that some time in the month of March now last past, Charles Bennitt, the plaintiff, came to his (the deponent's) house and requested that the deponent would go with him to the house of one Angus MacDonell, to be present at some

settlement between the plaintiff and defendant, which he did, and during the time he (this deponent) was at the house of the said McDonell, he saw and read the original award made in this cause, which is alluded to by the plaintiff in his motion, and which was in substance as nighly as he can recollect, the same as that which is now delivered to this Court.—Roderick McLeod.

Angus MacDonell, of the County of Glengarry, tavern-keeper, being duly sworn to give evidence in this cause, deposeth and saith that on Tuesday, the twenty-fourth day of March now last past, the plaintiff, Charles Bennitt, and the defendant, Thomas Stratton, came to his house and entered upon some business relative to the suit depending between them, and during the time that they the said parties were at his house, he (this deponent) heard the plaintiff read a paper which the plaintiff called an award, which paper contained, as he heard it read, nighly as he can recollect, the same substance as the certified copy filed by the plaintiff in this cause. And this deponent further saith that he is one of the witnesses whose names were subscribed to a certain written paper, wherein the defendant acknowledges the delivery of the staves and all the other articles agreeable to the tenor of the award, which said written paper he, this deponent, the defendant deliver to the plaintiff.

his

Angus X MacDonell.
mark.

Catherine MacDonell, wife of Angus MacDonell, of the County of Glengarry, tavern-keeper, being duly sworn to give evidence in this cause, deposeth and saith that on the evening of the twenty-fourth day of March now last past, the plaintiff delivered to her several papers, which she took and laid upon a table in a different room from that in which she received them, but on being asked the next morning by the plaintiff for the papers she went to look for them, and the papers were gone, and she has never been able to find them.

her

Catherine X MacDonell,
mark.

The plaintiff appeared.

The defendants appeared, and move the Court that they may be permitted to file plea in abatement of this suit, which motion the Court admit, and the defendants accordingly filed plea in abatement.

In answer to the issue raised by the declaration and plea in abatement filed in this cause, the Court are of

William Buell,
Esq.,

vs.

Mercy Buell,
executrix, and
Bemsley Buell,
executor of the
last will and
testament of
Timothy Buell,
deceased.

opinion that the matter advanced by the defendants is not sufficient to warrant the dismissal of this suit, and therefore order that the defendants do plead to the merits.

Rice Honeywell
vs.
Ezekiel Spicer.

The plaintiff appears and prays that he may be permitted to enter a retraxit of this suit, which prayer the Court grant, and the retraxit is accordingly entered.

On motion of the plaintiff, it is ordered that the bond filed by him in this, at the last term, be returned to him by the Clerk.

William Buell,
Esq., vs.
Mercy Buell,
executrix, and
Bemslee Buell,
executor to the
last will and
testament of
Timothy Buell,
deceased.

The parties, plaintiff and defendants, being present in court, move that they may be permitted to submit the decision of their suit to arbitration, which prayer the Court grant, and accordingly the parties plaintiff and defendants have mutually chosen, agreed and consented to Solomon Jones, of Augusta, surgeon, John Jones, of Augusta, Esquire, Asa Landen, of Augusta, yeoman, and James Breakenridge, of Elizabethtown, Esquire, to be arbitrators in this cause, to arbitrate, award, decide upon, and finally to finish and determine, all matters and things respecting, concerning, or any wise relating to the suit now depending between the said parties, plaintiff and defendants. And the said arbitrators shall meet on some convenient day by them to be appointed between this day and the next ensuing term of this Court, and they or the greater part of them shall make an award in writing under their hands and seals, and shall inclose the same and deliver it to the parties, to be by them returned unopened, into this Court on the second day of the next ensuing term, and after the said award shall have been approved by the judges of this Court, or any two of them, the same shall be final and binding on the said parties, plaintiff and defendants, and in case the said arbitrators cannot agree upon an award, they or the greater part of them shall choose an umpire, who, by mutual consent of the said parties, shall be vested with the same powers and authorities as are herein before given to the before named arbitrators, and the said umpire so to be chosen (in case there shall be one chosen) shall make, write, seal and deliver his umpirage in the same manner as is directed to be done in case of an award, and the said umpirage, in case there shall be one made, shall be returned into this court at the time and in the same manner as is directed to be done in case there shall an award be made by the aforesaid arbitrators, which umpirage in case there shall be one made, after the same shall have received the approbation of the judges of this court, or any two of them,

shall be final and binding on the aforesaid parties, plaintiff and defendants. And the Court do order that the said arbitrators, or umpire in case there shall be one chosen, shall be sworn to do justice, to the best of their judgment, to the said parties, plaintiff and defendants.

Wm. Buell, plaintiff.

Marcy Buell and Bemslee Buell, defendants.

The plaintiff appears and moves the Court that he may be permitted to enter a retraxit of this suit, which the Court grant, and a retraxit is accordingly entered.

Simeon Coville
vs.
Truelove Butler.

Personally appeared in open court, Henry Bolton, the defendant, and made oath upon the Holy Evangelists of Almighty God that he personally demanded of Christian MacKinivan the amount of the sum awarded by certain arbitrators in this suit appointed and nominated by the mutual consent of the parties, under a rule of this Court made in last November term, which sum she, the said Christy MacKinivan did not pay; and that the same is still due and owing to him, the said Henry Bolton.

Christy
MacKinivan
vs.
Henry Bolton.

Henry Bolton.

The plaintiff appeared in person and moved the Court that he may be permitted to file his declaration.

Simeon Coville
vs.
Oliver Sweet.

The Court admit of the plaintiff's motion and he accordingly filed declaration.

The defendant appears, and says that he is not prepared to come to trial, and therefore prays that this cause may be put off and continued over till the next term.

The Court order that this cause be called again on Tuesday next, and that the defendant shall then give his reasons for praying for an adjournment of the suit.

The plaintiff appears and moves the Court that he may be permitted to file his declaration.

Simeon Coville
vs.
Joseph White.

The Court admit of the plaintiff's motion, and he accordingly filed declaration.

The defendant having been duly called does not appear.

Wherefore, on motion of the plaintiff, it is ordered that a default be entered against the defendant.

Mr. Jacob Farrand appears as agent for the plaintiffs. The defendant appears.

The plaintiffs, by their agent, move the Court that the defendant may be ordered to file plea to the declaration.

The defendant represents to the Court that he is not prepared to answer to the declaration, and cannot be pre-

Joseph Forsyth
& Co.,
vs.
Hugh Munro, Esq.

pared to come to trial in this term, and therefore prays this cause may lay over till the next term.

The Court order that this cause be called again on Tuesday next, and that the defendant shall give his reasons for praying an adjournment, in writing, to be filed in this cause.

The Court adjourned till Monday next at 10 o'clock in the forenoon.

MONDAY, 14th APRIL, 1794.

The Court met pursuant to adjournment.

Present: The Honorables John MacDonell and John Munro, Esquires.

John Parlow
vs.
Alexander
Campbell.

The Sheriff returned the writ.

The plaintiff appeared and filed declaration.

The defendant appears, and represents to the Court that he is not prepared for trial, and therefore prays that this cause may be put off and continued over till the next ensuing term. With the consent of the plaintiff it is ordered that this cause be put off till the second day of the next ensuing term.

John Parlow
vs.
Jacob Waggoner.

The Sheriff returned the writ.

The plaintiff appears and prays that he may be permitted to enter a retraxit of this cause.

The Court grant the prayer of the plaintiff, and he accordingly entered retraxit.

Charles Bennitt
vs.
Thomas Stratton.

On motion and prayer of the plaintiff, the Court have taken into consideration the award of the arbitrators appointed in this cause, under a rule of Court, made in last November term, are of opinion that the said award is just, and therefore do approve of and confirm the same.

Terence Smith
vs.
John Man.

The plaintiff appears by his agent.

The defendant does not appear.

Mr. Jacob Farrand appears as agent for the plaintiff and represents to the Court that whereas the plaintiff did obtain a judgment of default before this Honorable Court, in last November term, against the defendant, he therefore, on the part of the plaintiff, prays that final judgment may be entered up against the defendant.

The Court, in answer to the motion made by the plaintiff's agent, are of opinion that final judgment ought not to be entered against the defendant at this term; because the Court did by a rule made in last term, direct that the

defendant should be made acquainted with the suit then and not depending against him, and whereas it is not possible that the defendant could have had such notice, since the last term in time to appear at this term, either in person, or by an agent, the Court do therefore order that this cause be continued over till next term.

The plaintiff appears.

The defendants appear, and pray judgment on the issue raised by the declaration and plea filed in this cause.

The Court, in answer to the defendant's motion, are of opinion that this action ought not to abate, and therefore, on motion of the plaintiff, do order that the defendants immediately give in plea to the merits.

The defendants for their plea to the merits, answer and say that they are in no manner indebted to the plaintiff as is set forth in the declaration, and therefore pray that the truth may be inquired of.

Whereupon the Court do order that a venire do issue to summons a jury in this cause, returnable to-morrow at nine o'clock in the forenoon, and that the special matter be given in evidence to the jury.

The plaintiff appeared.

The defendant appeared.

The Court in answer to the defendant's notice of appeal given to this Court, have at present no objection to the bail tendered by him, and are ready upon his giving the requisite security according to law, and upon producing a writ of appeal, directed to the judges of this court, from any court in this Province, authorized to give such writ, to allow the same and comply therewith.

Joseph Anderson, Esquire, appeared as agent for the plaintiff,

The defendant having been duly called does not appear.

Joseph Anderson, for the plaintiff, filed two notes of hand from the defendant to the plaintiff. The plaintiff, by his agent, represents to the Court that he obtained a judgment of default against the defendant in the last term, and whereas the defendant does still continue to make default, by not appearing at this term, he humbly prays that final judgment may be entered up against the defendant for the sum demanded in and by the declaration, together with costs of suit.

The Court having seen the declaration and the exhibits filed in this cause and having examined the same, do find the defendant to be indebted to the plaintiff in the sum of four pounds, six shillings and eightpence, Quebec currency,

William Scott
vs.
William Barton,
Joseph Barton
and John Barton.

Justus Sherwood
vs.
Samuel Adams.

Joseph White
vs.
Samuel Shipman.

and do therefore condemn the defendant to pay to the plaintiff the said sum of four pounds, six shillings and eightpence, together with costs of suit to be taxed.

Joseph Anderson
vs.
Richard Hope.

The plaintiff appears in person.

The defendant having been duly called does not appear.

The plaintiff filed a note of hand from the defendant, and represents to the Court that he obtained a judgment of default against the defendant in the first week of this term, and whereas the defendant does still continue to make default, he (the plaintiff) prays that final judgment may be entered up against the defendant for the sum demanded in and by the declaration, with costs of suit.

The Court having seen the declaration and the defendant's note of hand filed in this cause, do order and adjudge that the defendant do pay to the plaintiff the sum of three pounds, twelve shillings and eightpence, Halifax currency, with lawful interest thereon from the eighteenth day of June, in the year of our Lord one thousand seven hundred and ninety-one, together with costs of suit to be taxed.

Richard Wilkinson
vs.
William Falkner.

On motion of Jacob Farrand, Esq., it is ordered that he do file power of attorney appointing and constituting him agent for the plaintiff, and he accordingly filed the said power of attorney.

The defendant having been duly called does not appear, nor any agent for him.

Mr. Farrand, agent for the plaintiff, represents to the Court that the plaintiff, by the judgment of this Honorable Court, obtained a default against the defendant in the last term. And whereas the defendant does still continue to make default, by not appearing at this term, Mr. Farrand, as agent for the plaintiff, and on the part of the plaintiff, moves that this Honorable Court will order final judgment to be entered up against the defendant for the sum demanded in and by the declaration filed in this cause.

Whereupon the Court, having seen the declaration and the plaintiff's account filed in this cause, and having maturely considered and examined the same, do condemn the defendant to pay to the plaintiff the sum of seventeen pounds, four shillings and fourpence, Quebec currency, together with costs of suit to be taxed.

On motion of Jacob Farrand, Esquire, it is ordered that he do file power of attorney appointing and constituting him agent for the plaintiff, and he accordingly filed the said power of attorney.

The defendant having been duly called does not appear.

Mr. Farrand, agent for the plaintiff, represents to the Court that the plaintiff, by the judgment of his Honorable Court, obtained a default against the defendant in the last term, and whereas the defendant does still continue to make default by not appearing at this term; Mr. Farrand, as agent for the plaintiff and on the part of the plaintiff, moves that this Honorable Court will order final judgment to be entered up against the defendant for the sum demanded in and by the declaration filed in this cause.

Whereupon the Court, having seen the declaration and the defendant's note of hand filed in this cause, and having examined the same, do condemn the defendant to pay to the plaintiff the sum of twenty-two pounds, fifteen shillings and sixpence, Quebec currency, together with costs of suit to be taxed.

The Court adjourned till to-morrow at nine o'clock in the forenoon.

TUESDAY, 15th APRIL, 1794.

The Court met pursuant to adjournment.

Present: The same Judges.

The plaintiffs appear by their agent.

Joseph Forsyth
& Co.
vs.
Hugh Munro,
Esquire.

The defendant appears and files his reasons for praying an adjournment of the cause, and the Court having considered the same do order that this cause shall lay over and be continued till next term.

The plaintiff appears.

The defendants appear.

The Sheriff returned the venire.

William Scott
vs.
William Barton,
Joseph Barton
and John Barton.

The jury impanelled and sworn to try the issue joined in this cause were:—

- | | |
|------------------------|-----------------------|
| 1. Thomas Fraser, Jun. | 7. Richard Davis. |
| 2. James Humphrey. | 8. Samuel Wilson. |
| 3. William Fraser. | 9. Hugh MacIlmoyle. |
| 4. John Whitney. | 10. James Froom, Sen. |
| 5. Jesse Purdy. | 11. Henry Jackson. |
| 6. John Riddiboch. | 12. Ephraim Curry. |

Evidence sworn on the part of the plaintiff, viz.: 1, Silas Hamblin; 2, Moses Hurlburt; 3, Herman Hurlburt; 4, Elisha Baker; 5, William Leehye, Jun.; 6, John Brundage; 7, John Heeck; 8, Joseph Knapp; 9, Capt. Simon Colville.

Evidence sworn on the part of the defendants, viz.: 1, Justus Sherwood, Esq.; 2, Alexander Humphrey; 3, John Scott; 4, Oliver Everts; 5, John Chester; 6, Phebe Chester; 7, Jenny Cross; 8, Joel Smades.

The jury having heard the evidence in this cause, and having also heard the parties on their behalfs respectively, retire to consider of their verdict under the charge of Nicholas Mosher, bailiff.

The jury having returned into court say by Samuel Wilson, their foreman, that they find a verdict for the plaintiff in the sum of seven pounds, that is to say, two pounds for the hog and five pounds for his damages, *exclusive of the costs in this cause*, and so they say all.

J. McDONELL, J.C.P.

Thomas Bluard
vs.
Isaiah Cain.

On motion of Mr. Solomon Jones, of Augusta, surgeon, it is ordered that he files a power of attorney from the plaintiff, constituting him agent for the plaintiff, and he accordingly filed the said power of attorney.

The plaintiff by his agent filed declaration.

The defendant appears, and acknowledges that he is justly indebted to the plaintiff in the sum demanded in and by the declaration and confesses judgment thereon.

Mr. Jones, agent for the plaintiff, filed a note of hand from the defendant to the plaintiff.

Whereupon the Court do condemn the defendant to pay to the plaintiff the sum of six pounds, four shillings and threepence, Quebec currency, together with costs of suit to be taxed.

Simeon Coville
vs.
Oliver Sweet.

The plaintiff appears.

The defendant appears and says that his reason for wishing an adjournment is that he has some accounts against the plaintiff's demand, which are at present mislaid and cannot be found, and for which the plaintiff has not given any credit in his account.

The Court cannot admit of an adjournment of this cause on the reason offered by the defendant, and do therefore order that he enter plea to the merits.

The defendant comes into court and acknowledges himself to be indebted to the plaintiff in the sum of thirteen pounds, five shillings and fourpence, Quebec currency, and confesses judgment for the sum above said.

The plaintiff, being personally present in court, says that he will be satisfied for the demand made against the defendant in and by his declaration filed in this suit, on the defendant's paying to him the aforesaid sum of thirteen pounds, five shillings and fourpence, with costs of

suit, and therefore prays that judgment may be entered up against the defendant for the same.

Whereupon the Court, having considered the confession of the defendant, and the plaintiff's consent, do condemn the defendant to pay to the plaintiff the aforesaid sum of thirteen pounds, five shillings and fourpence, together with costs of suit.

The plaintiff appears, and for his plea says that he is in no wise indebted to the plaintiff as set forth in his declaration, and prays that the truth may be inquired of.

Whereupon the Court order that a venire do issue, returnable immediately, to summon a jury to try the issue joined in this cause.

The Sheriff returned the venire.

The jury impannelled and sworn to try the issue joined in this cause were:—

- | | |
|----------------------|--------------------|
| 1. Andrew Adams. | 7. Jesse Purdy. |
| 2. Ephraim Curry. | 8. Richard Davis. |
| 3. James Froom, Sen. | 9. Thomas Fraser. |
| 4. John Hick. | 10. Silas Hamblin. |
| 5. William Fraser. | 11. Samuel Wilson. |
| 6. Philip Dulmage. | 12. Henry Jackson. |

The plaintiff filed an account against the defendant.

The defendant filed an account against the plaintiff.

Evidence sworn on the part of the defendant, viz.:—

1, John MacNeil; 2, Thomas Sherwood, Esq.

The jury having heard the declaration and the defendant's plea, and seen the exhibits filed and produced in this cause and heard the parties respectively on their own behalf, retire to consider of the verdict under charge of Nicholas Mosher, bailiff.

The plaintiff appeared.

The defendant appeared.

Ordered by the Court that this cause be put off and called again to-morrow.

The plaintiff appeared and prayed that he might be permitted to enter a retraxit of this suit, which the Court grant, and a retraxit is accordingly entered.

The Court adjourned till to-morrow at nine o'clock in the forenoon.

Simeon Coville
vs.
Joseph White.

Verneuil Lorimier
vs.
Daniel Smith.

James
Breakenridge
vs.
Reuben Mott.

WEDNESDAY, 16th APRIL, 1794.

The Court met pursuant to adjournment.

Present: The same Judges.

Simeon Coville
vs.
Joseph White.

The parties being present in Court.

The jury having returned into Court say by John Hick, their foreman, that they find a verdict for the plaintiff in the sum of one pound, eighteen shillings and fourpence halfpenny, Quebec currency, with costs, and so they say all.

The Court having considered the verdict of the jury do confirm the same, and condemn the defendant to pay to the plaintiff the said sum of one pound, eighteen shillings and fourpence halfpenny, Quebec currency, together with costs of suit.

Verneuil Lorimier
vs.
Daniel Smith.

The plaintiff appears.

The defendant comes here into court and for his plea and in answer to the declaration saith that he is in no wise indebted to the plaintiff in his capacity or quality of agent for the Indians of Oswegatchie for any contract made with him or them, for any timber cut on the south side of the River Iroquois, he (the defendant) having already paid and satisfied for all the timber he has cut on that side of the river, and particularly for the timber for which the plaintiff now brings this action, he (the defendant) by the directions of the plaintiff, did pay one George Ailey, all of which he (the defendant) is ready to verify.

The plaintiff represents to the Court that as the defendant has set forth in his plea that he has made satisfaction for the timber by him cut on the south side of the River Iroquois, and has done so in compliance with the directions of the plaintiff, it will be necessary for him (the plaintiff) to have certain evidences to elucidate the directions alluded to by the defendant, which cannot be done at this term, by reason of the distance those evidence are at present from this place, and therefore prays that this cause lay over and be continued till the next term.

The plaintiff having made it appear to the Court that Mr. Solomon Jones, of Augusta, and Mr. George Ailey are principal and necessary evidences in this cause, and that they cannot be present before the close of this term, the Court do therefore, with consent of the defendant, order that this cause be continued over till next term, and that the parties do appear prepared with their evidences on the second day of the next ensuing term.

John Livingston
vs.
John Pottiar.

The plaintiff appears and files written articles of agreement between him and the defendant, with a promissory note under the said articles written from the defendant to the plaintiff.

The defendant having been duly called does not appear.
The plaintiff represents to the Court that he has ob-

tained a judgment of default against the defendant in the first week of this term, and whereas the defendant does still continue to make default by not appearing, after having been duly called this day, he therefore prays this Honorable Court will order final judgment to be entered up against the defendant for the sum demanded in and by the declaration.

Whereas it appears to the Court that the note given by the defendant to the plaintiff is in the nature of a penalty of a bond wherein damages may be included, cannot therefore give final judgment thereon without the verdict of a jury, and do therefore order that a venire do issue, returnable this day, to summons a jury to try the merits of this cause.

The plaintiff appeared and filed an account against the defendant for the sum of twenty-seven pounds, Quebec currency.

John Levingston
vs.
John Adam
Stinger.

The defendant having been duly called does not appear.

The plaintiff represents to the Court that he obtained a judgment of default against the defendant in the first week of this term, and whereas the defendant does still continue to make default, by not appearing after having been duly called on this day, he therefore prays that this Honorable Court will order final judgment to be entered up against the defendant for the sum demanded in and by the declaration.

It appearing to the Court that the plaintiff in his declaration hath demanded damages, the Court therefore are of opinion that final judgment thereon cannot be given without the verdict of a jury, and do in consequence thereof order that a venire do issue returnable this day to summons a jury to try the merits of this cause.

The Sheriff returned the venire.

John Levingston
vs.
John Pottiar.

The jury impannelled and sworn to try the merit of this cause were:—

- | | |
|--------------------|------------------------|
| 1. Jesse Purdy. | 7. John Hick. |
| 2. Henry Jackson. | 8. Ephraim Curry. |
| 3. Silas Hamblin. | 9. Thomas Fraser, Jun. |
| 4. David Sillick. | 10. Andrew Adams. |
| 5. Philip Dulmage. | 11. Richard Davis. |
| 6. James Humphrey | 12. Hugh MacIlmoyle. |

Evidence sworn on the part of the plaintiff, viz.: 1, Thomas Doyle; 2, Major Watson; 3, Daniel Shipman.

The jury having seen the exhibits filed in this cause and having heard the evidence produced by the plaintiff,

retire to consider their verdict under the charge of Nicholas Mosher, bailiff.

William Scott
vs.
William Barton,
Joseph Barton
and John Barton.

The plaintiff appears in open court and prayed that final judgment might be entered up against the defendants according to the verdict of the jury.

The Court having seen and considered the verdict of the jury given in this cause do confirm the same, and condemn the defendants to pay to the plaintiff the sum of seven pounds, Quebec currency, together with costs of suit to be taxed.

John Levingston
vs.
John Pottair.

The jury having returned to court say by John Hick, their foreman, that they find a verdict for the plaintiff in the sum of eighteen pounds, Quebec currency, with costs, and so they say all.

John Levingston
vs.
John Adam
Stinger.

The Sheriff returned the venire.

The jury impannelled and sworn to try the merits of this cause were:—

- | | |
|----------------------|------------------------|
| 1. William Fraser. | 7. Andrew Adams. |
| 2. John Hick. | 8. Daily Sillick. |
| 3. John Whitney. | 9. Philip Dulmage. |
| 4. James Froom, Sen. | 10. Jesse Purdy. |
| 5. Henry Jackson. | 11. Thomas Fraser, Jun |
| 6. Silas Hamblin. | 12. Richard Davis. |

The jury having heard the declaration and the plaintiff's account filed in this cause, and having requested that the plaintiff should attest to his account, which he accordingly did in presence of the jury, they retire to consider of their verdict under charge of Nicholas Mosher, bailiff.

The jury having returned into court say by John Hick, their foreman, that they find a verdict for the plaintiff in the sum of thirty pounds, Quebec currency, with costs, and so they say all.

The plaintiff being present in court moves that the Court will order final judgment to be entered up against the defendant.

The Court having seen and considered the verdict of the jury given in the cause do confirm the same, and condemn the defendant to pay to the plaintiff the sum of thirty pounds, Quebec currency, with costs of suit to be taxed.

John Levingston
vs.
John Potteair.

The plaintiff appears in court, and moves the Court that final judgment may be entered up against the defendant according to the verdict found by the jury in the cause.

The Court having seen and considered the verdict found by the jury in this cause, do confirm the same, and condemn the defendant to pay to the plaintiff the sum of eighteen pounds, Quebec currency, with costs of suit to be taxed.

The Court adjourned till next term.

J. McDONELL, *J.C.P.*

JOHN MUNRO, *J.C.P.*

APPENDIX I,

THE COURTS OF COMMON PLEAS.

In the same Number, 1198, Supplement to the Quebec Gazette, July 24th, 1788, which contained the publication of the Patent creating the five new Districts, Luneburg, Mecklenburg, Nassau, Hesse and Gaspé, there was published another Patent or Proclamation dated July 24th, 1788, allowing the Judges of the Courts of Common Pleas to be formed in the new Districts certain fees, thus introducing the system already discredited in the older part of the Province.

There was in the same Number a notice of appointments on the Commission of the Peace in the Districts of Quebec and Montreal, 25 in Quebec (14 of French and 11 English and Scottish names), 41 in Montreal (27 of French and 14 English and Scottish names), including the Members of the Council. These we pass over as not belonging to our subject.

For the District of Luneburg were appointed as Justices of the Court of Common Pleas, Richard Duncan, Edward Jessup, and John McDonell; as Sheriff, John Monroe; as Clerk of the Court of Common Pleas and of the Peace and of the Sessions of the Peace, Jacob Farrand. The Court of Common Pleas continued to be composed of the three, Duncan, Jessup and McDonell (Macdonell), until September, 1790, when Jessup ceased to serve; his successor, John Munro (or Monroe) took his seat for the first time in December, 1792. Duncan's last appearance as Judge was February 28, 1793, after which until the Court was abolished by the King's Bench Act in 1794, it was presided over by McDonell and Munro.

The Court according to the records sat at, Cornwall, Augusta, Edwardsburg, Osnabrock, Stormont and New Johnstown.

In Mecklenburg, the Justices of the Court of Common Pleas were: John Stuart, Neal McLean, and James Clark; the Sheriff was William Radford Crawford; the Clerk of the Court of Common Pleas, Clerk of the Peace and of the Sessions of the Peace, Peter Clark.

John Stuart was the Reverend John Stuart, who had permanently settled at Kingston the same year, 1788; he declined the office and Richard Cartwright was appointed in his place. James Clark did not sit after July 8, 1789. Hector McLean took his place, January 3, 1791, and Cartwright, with the two McLeans, continued to preside over the Court until its abolition—often, however, only two of them attended.

In the Court of Common Pleas for the District of Nassau, the Justices were John Butler, Robert Hamilton and Jesse Pawling; the Sheriff, Gilbert Tue, and the Clerk of the Court of Common Pleas, of the Peace and of the Sessions of the Peace, Phillip Fry. In this Commission there was a curious mistake made. It had been intended to appoint Benjamin Pawling, Colonel John Butler and Robert Hamilton, judges of the Court, but Jesse Pawling's name was inserted in the Commission instead of Benjamin Pawling's—however, this was speedily rectified, and on October 22nd, 1788, Jesse Pawling's Commission as judge was revoked (he being appointed a Coroner for the District), and Benjamin Pawling, Peter Tenbrook and Nathaniel Petit were added as judges to the two already appointed, Colonel Butler and Robert Hamilton.

There is no record of the proceedings of this Court known to be extant; but no doubt it sat at Newark.

In the District of Hesse the Justices of the Court of Common Pleas first appointed were: Dupéron Baby, Alexander McKee and William Robertson. The Sheriff was Gregor McGregor, the Clerk of the Court of Common Pleas, Clerk of the Peace and of the Sessions of the Peace was Thomas Smith.

This District included in fact, if not in law, the stirring town of Detroit, where much trade was carried on. While from the conquest in 1760 till the Quebec Act of 1774, the Governor or Commandant at Detroit had been semi-independent, that Act brought Detroit within the Province of Quebec; the ordinance of February 25, 1777, automatically placed it within the District of Montreal and subject to the jurisdiction of the Court of Common Pleas of that District. How unsatisfactory that was may well be imagined when the distance, want of communication, etc., are considered—the inconvenience was in 1786 represented to the Governor by a committee of the merchants of Montreal, "Detroit is become a settlement, both of great extent and great consequence; it annually fits out a vast trade to the Interior Posts circumjacent to it which in

the course of carrying on, disputes and differences invariably arise, to determine which for the want of a judicial power on the spot, they are obliged to have resorts to the Courts at Montreal, where from the delay and expense occasioned by the great distance of one place from the other the suitor is generally more oppressed than benefitted—the great delay affords an opportunity to the debtor of making away with his property and the plaintiff thereby, independent of the loss of his debt, becomes further saddled with the costs of suit. For instance, the merchant of Detroit sends to Montreal for a summons against one of his debtors . . . His letter takes a month frequently coming down, the summons issues and three months is the shortest space allowed for its return and according to the season four, five and six months is granted. The summons goes up . . . some ignorant person is appointed to serve it, he commits an error; so that when the writ is returned, the service is found defective, and the only remedy then left to the plaintiff is to begin again—this happens at least three times out of five, but if perchance the summons is returned properly served and that judgment goes by default, it then requires six months before the property of the debtor can be seized upon at Detroit by virtue of an execution issuing on a judgment so obtained, and even when execution goes up it's of no avail unless the Commanding Officer of the Post interferes by affording Military aid to enforce it." The Report states that there are not less than forty suits a year above £10 sterling, by persons in Detroit against others in the same place and not above one-fourth have the desired effect, not to mention the very great expense for costs of suit—if a resident judge were to be appointed there would be three or four hundred suits as well below or above £10 sterling. The Report recommended the formation of a District separate from that of Montreal and composed of the Posts of Detroit and Michilimackinac, the establishing of a Court of Civil Jurisdiction therein to be called the Court of Common Pleas with similar jurisdiction to that of the other Courts of Common Pleas in the Province and presided over by one Judge whose judgment should be final upon to £50 currency (\$200) with an appeal to the Court of Montreal when over that sum. It will be seen that these merchants desired not only a new Court but a Court with one judge. There is no room for doubting that this Report expressed the sentiments of the Detroit merchants (the ordinary inhabitants of Detroit and its dependencies had no law suits and cared nothing for the constitution of the civil Courts.) The Governor in appointing Justices of the new Court had followed the recommendation contained in his instructions of January 5, 1775, which after advising that there should be a Court of Common Pleas in each of the two Districts then existing said, "that there be three judges in each of the said Courts of Common Pleas, that is to say, two of our natural born subjects of Great Britain, Ireland or our other plantations and one Canadian"—rather than the suggestion that in the inferior Court of King's Bench of civil and criminal jurisdiction in each of the proposed new Districts of the Illinois, St. Vincenne, Detroit, Missilimakinac and Gaspée, the Court should consist of one judge, a natural born subject, and that there should sit with him as an advisor only, a Canadian to give him advice in any matter when it should be necessary.

The Governor was well acquainted with the circumstances and condition of all the new as of the old Districts. We find him writing to Lord Sydney, November 8, 1788. "The Canadians, a new subject, occupy the Districts of Quebec and Montreal and some are also found in the Districts of Gaspé and Hesse. The three Districts of Lunenburg, Mecklenburg and Nassau are inhabited only by the loyalists or old subjects of the Crown. Accordingly, while he did not think it necessary to appoint a Canadian to any of the three Districts of Lunenburg, Mecklenburg and Nassau, he did appoint one in Hesse, Dupéron Baby.

When the constitution of the Bench became known in Detroit, it caused great dissatisfaction—the "Merchant Traders and Inhabitants of Detroit to the number of 34, all 'old subjects,' drew up a 'Memorial and Representation' to Dorchester, saying that they were 'seized with an infinite alarm for the security of their properties under an arrangement which they see pregnant with the most destructive consequences.'"

No other judge was consequently appointed to this Court. Powell continued to be its "First Judge" and only Judge until its abolition in 1794, by the King's Bench Act of that year.

The Court sat at L'Assomption, now Sandwich.

In this alone of the four new Courts we have a certainty of the successive Clerks. They were Thomas Smith, Charles Smyth and William Monforton. The Sheriff was Gregor McGregor.

APPENDIX II.

THE COURT OF COMMON PLEAS FOR THE DISTRICT OF LUNEBURG.

The first sittings of this Court, so far as is shewn by the extant Records was June 1, 1790; there must have been previous sittings but the record of them has not been recovered.

Only two Judges sat: there is no provision in the ordinance of 1785 for the number of judges constituting a quorum. At the common law in the absence of an express provision a majority of the number of any class or body constitutes a quorum for doing business. Consequently two out of the three Justices were sufficient.

Nancy Drew vs. James Daugherty and Hannah, his wife.

This was an action for more than £10 sterling or there would have been no writ and no right to a jury. Ord. 1785, Arts 36, 9. The plaintiff was a woman without a husband (almost certainly a spinster as she had the same surname as her father, Paul Drew). At that time no married woman could sue in her own name at the English law and we may be reasonably certain that that rule would be applied at Cornwall.

The action seems to have been for slander, and the words complained of did not impute unchastity; simply such words were not then actionable.

The Sheriff had served a copy of the writ on the defendants with a copy of the "declaration," i.e., the pleading which set out the cause of action (corresponding to our present "Statement of Claim"); and it was his duty to return the writ to the Court with a statement of what he had done with it.

The defendants appeared: it may be that it was only the wife who was charged with uttering the slander—then and for long after the husband was liable to the full extent for the wrongs "torts" committed by his wife.

The defendants on appearing pursuant to the writ of summons had the right to make their answer to the declaration either at once or on some other day fixed by the Court and either in writing or verbal. Ord. 1785, Art. 8. Here the answer was made orally, whereupon it was the duty of the Clerk of the Court to "take down the substance thereof in writing and preserve the same among the records of the Court and in the same action."

The Ord. 1785 by Art. IX allowed either party to have the verdict of a jury in all cases of personal wrongs, such as slander, and the defendants elected to have a jury trial, whereupon the Court granted a *venire facias* to issue to cause a jury to attend on the morrow at 10 o'clock.

The following day the jurors attend and are impanelled (the Sheriff returning the writ). Witnesses are called by each party, no lawyers appear, but it is probable that the plaintiff was represented by her father, Paul Drew: the jury find for the defendants and the action is dismissed with costs.

Nancy Drew vs. David Bruce.

A similar action by the same plaintiff; the defendant appears and demands a jury; the next day the plaintiff asks for an adjournment to produce a necessary witness, the Reverend Mr. John Bryan. The Court against the remonstrance of the defendant grants the request and the trial is postponed to the following term. Before the next term comes round, September 16, 1790, the plaintiff had gone to "the Colonies," i.e., the revolted colonies, now the United States, and her father's prayer for a further enlargement being opposed by the defendant, he withdraws the action and has to pay the costs. One is tempted to think that the absence of the plaintiff in "the colonies" was calculated. She had already lost one and won one action and probably had had enough of it.

Nancy Drew vs. Stephen Miller.

A similar action. The defendant admits using the words complained of but demands a jury. The jury which tried the Daugherty case try this also, but with a different result. The defendant is obliged to pay £2 (\$8.00) damages and half the costs.

It will be observed that David Bruce, the defendant in the other action, was called as a witness by the defendant in this action, that he was objected to and the objection allowed.

Peter Bruner vs. John Markle.

Another case of slander—the defendant admits the words but denies that he intended to defame, but only to jest. This the Court properly held immaterial—

if one does another an injury he is not excused because he did not intend it (except on a criminal charge). "If a man in jest conveys a serious imputation he jests at his peril." The parties do not ask for a jury and the Court assess the damages at 2s. 6d. (60 cents).

Rossiter Hoyle vs. Farquhars.

We have here a continuation and the end of an action tried at some previous sitting. Judgment had gone for the plaintiff and a writ of execution issued (technically "*fiери facias*" or *fi fa* goods and lands) to the sheriff to make the debts and costs out of the goods of the debtor and if these be insufficient out of his lands, the debtor pays the debt and there remains but the costs of the Court, the Clerk and the Sheriff to be paid. The plaintiff is ordered to pay these. The plaintiff appears by an Agent, Mr. John Beikie of Cornwall. He was not an Attorney at Law and never became one, but this was no objection to his acting as Agent.

Rossiter Hoyle vs. Phillip Cryslar.

Another precisely similar case.

Thomas Coffin vs. Jacob Countryman.

The defendant appears and settles the debt, apparently also the costs, as he is "Discharged from this Suit." The plaintiff is represented by an Agent, Clerk of the Court and so well known in the District.

Elisabeth Loucks vs. Hannah Loucks.

The case is settled, the plaintiff to pay the costs. The plaintiff has an Attorney, Thomas Walker.

Samuel Adams vs. Hugh Munro.

Hugh Munro, the defendant, was one of the two Coroners (Joel Stone being the other) for the District. He had sold certain land but claimed there was a balance due of 20s. (\$4.00) and that the balance had not been tendered or the deed presented for his execution. Thos. Walker, Attorney for the plaintiff, asserts (1) that the balance had been tendered and (2) that there was no need to tender a deed as Munro had a deed prepared in his own hand writing which he refused to execute. The Court ordered Munro to execute the deed and to pay the costs.

No common law court in England had the power to make such an order. All that any but a Court of Chancery could do would be to award the plaintiff damages. No Chancery Court would have made this order under the circumstances. The vendor of land could not be called upon to give a piece of paper or parchment in addition to the land; if the purchaser desired a deed he must have a deed prepared, or if it were prepared by the vendor's solicitor, must pay for it.

David Su vs. Alex. Campbell.

At the request of both parties this case was referred to arbitration, William Faulkner being named the sole arbitrator. His award was approved. The practice of referring cases to arbitration is no longer followed by our Courts, but there is no objection to the parties themselves referring their differences to arbitration, quite the contrary.

Margaret Piller vs. Frederic L. Markley.

The husband appears for the plaintiff.

William Faulkner, Esq., Curator to the Estate of Barnes Spencer, deceased, vs. Joseph Brownell.

The plaintiff has an attorney and naturally the defendant asks an enlargement to procure Counsel which is granted. On the first day of next term, January 13, 1791, he is represented by James Walker, who files a plea for him and the next day the plaintiff abandons his action by filing a *retraxit*. A Curator is not known to the English Law, it is a civil law term. This should have been the end of the proceedings, but we find, September 27, the plaintiff, through his Counsel, arguing in support of a petition he has presented to the Court and on the following day the petition is disposed of. It would seem that the costs of the defendant were not paid and that he had an execution issue for them against Faulkner personally. Faulkner moved against this execution and the Court directed the execution to issue against him as Curator of the estate only, so that if there were not sufficient assets of the estate in his hands the unfortunate defendant would

lose them. At the present time the costs would be ordered to be paid out of the estate and if not enough in the estate, by the executor (or curator) himself, so that the defendant would not lose them.

George Barnhart vs. Abraham Marsh.

The defendant wishes to be on even terms with the plaintiff and obtains an enlargement to procure Counsel, but we hear no more of the case.

George Barnhart vs. George Johnston.

This defendant is in like case and is allowed the like indulgence. Next term James Walker appears for him, a jury is called and a verdict given for the defendant.

George Barnhart vs. James Johnston.

This defendant has the same privilege. The next term James Walker appears for him and apparently daunted by his ill success in the previous action, the plaintiff abandons his case, paying the Clerk's fee, £1 4s. 6d.

The amount of the fees show that the sum claimed was less than £30 currency and over £10 sterling. Ord. 1780 allows for Clerk's fees, £1, 2s. 6d., in such cases, exclusive of office copies of paper and 6d. per sheet of 100 words for office copies of papers.

George Barnhart vs. Jeremiah French, Esq.

Thomas Walker and James Walker for the parties. A jury trial is fixed for Tuesday, January 18, 1791, but the Sheriff cannot get the jurors in time. Four days after the jury comes but the plaintiff does not want to go on, and the case is enlarged till the following June, when the verdict is found for the defendant.

John Shell vs. Phillip Crisler.

This is a case more than £10 sterling. On the failure of the defendant to appear on the day named in the writ of summons (here called "summons") he was defaulted, "Ord. 1785," Art. VI, and if he did not attend the next court the evidence for the plaintiff was taken in his absence and judgment given accordingly—if he did appear and paid the costs he was allowed to defend, "Ord. 1785," Art. VIII.

The case seems to have been settled: We see no more of it.

McTavish Frobisher & Co., vs. Rossiter Hoyle.

The plaintiffs were the well-known Montreal merchants, and had James Walker represent them. Hoyle defends in person. The subsequent proceedings show this to be a most interesting case. The plaintiffs had brought an action against the defendant in the Court of Common Pleas at Montreal, and applied for a Writ of Attachment. The ordinance of April 30, 1787, provided that "no process of attachment (except in one case not here in question) shall hereafter be issued for attaching the estate debts or effects . . . of any person . . . whomsoever, whether in the hands of the owner, the debtor or of a third person, prior to trial and judgment, except there be due proof on oath (to be indorsed on the writ of attachment) to the satisfaction of one of the judges . . . that the defendant or proprietor of the said debts and effects is indebted to the plaintiff in a sum exceeding £10, and is about to secrete the same or doth abscond or doth suddenly intend to depart from the Province with an intent to defraud his creditor or creditors, etc., etc."

The plaintiffs obtained an order attaching the defendant's "estate, debts and effects" from Judge Fraser and a Writ of Attachment issued to the Sheriff.

By the ordinance of April 30, 1789, Sec. 14, it was provided that the new Courts should assist the other Courts, new or old, for the perfecting of execution, and this was a proceeding to attach the goods of the defendant in the hands of John Beikie.

The defendant objected to the sufficiency of the affidavit before Mr. Justice Fraser, but in vain, one cannot attack a judgment or other formal proceeding in a Court "by a sidewind"—it must be attacked in the Court and directly.

Beikie was examined by the Court and when he admitted having goods of the debtors and owing him money, these were attached. This seems to have been effective, as by the next court day the debt is settled.

Justice Sherwood vs. Samuel Adams.

An action for slander. The defendant admits the words and "justifies." The plaintiff asks for a jury, the defendant is not ready, but neither counsel nor Court will listen to his plea for delay to procure two witnesses who are out of the Province. The next day the plaintiff repents and the case goes over till next term, to be held in January, 1792. The defendant appeared but there were not enough judges in the District to form a Court. In December, 1792, the Court having been fully constituted by the appointment of John Munro in the place of Edward Jessup, directed the action to begin *de novo*. Next month has not yet got his witnesses and the case stands over: then the defendant gets an Attorney, a "Professional Counsel" and the plaintiff appears in person. The Attorney pleads that the action is barred by lapse of time which takes the plaintiff all aback and he asks for time to procure Counsel. *Curia advisari vult*.

The next day the Court disallows the plea of the Statute of Limitations, giving several very bad reasons for their judgment, and it is decided to grant commissions for the examination of witnesses outside of the District. In May, 1793, the plaintiff files his replication, i.e., his answer to the defendant's plea. The next day Counsel for the defendant wants the plaintiff ordered to deliver his interrogatories or be barred from the commission, the Court takes up the cudgels for the plaintiff and orders the legal questions which retard the progress of the suit to be argued next term, with an intimation that if the Attorneys do not attend the Court will "put a period to the suit" anyway. Notwithstanding this the case is again adjourned owing to the absence of the defendant, then he is defaulted and the plaintiff asks final judgment. At length, in November, the defendant not appearing, the Court gives the plaintiff judgment and have a jury called to assess the damages. The jury find *the plaintiff not guilty* and award him £500 and costs of suit.

In April, 1794 the defendant gives notice of appeal, and the Court after consideration is ready to allow his Bail and upon his giving the requisite security and producing a "Writ of Appeal directed to the Judges of this Court from any Court in the Province authorized to give such Writ," the defendant would have the security allowed and the Writ obeyed. But there was no such Court and Samuel Adams had no relief.

Jacob Empey vs. Nicholas Lang.

By an ordinance of April 22, 1790, it was provided that it should not be lawful for anyone to "let his horses, horned cattle, sheep, goats or hogs trespass on individuals or stray in the public highroads . . . And if any neat cattle, goat or sheep be taken in trespass or straying in the public highway, the proprietor thereof over and above the damage which may be recovered in due course of law, shall incur a fine of one shilling for each neat cattle or goat, and threepence for each sheep. . . . And . . . every injury and damage which shall be sustained by every such straying or trespass as before mentioned may be used and recovered in the Court of Common Pleas of the District." The plaintiff claims damages for trespass by the defendant's horses, the defendant says they are not his horses, and the next day the plaintiff abandons his action.

Justus Sely vs. Hugh Johns.

The difficulties arising from there not having been judges enough to hold a Term are gotten over by ordering a new action to be brought. It was considered that the former action had become effete.

- Stephen Miller vs. Joseph Anderson, Curator.

The plaintiff sues for an account—the matter is referred to arbitrators who proceed with the reference: but the Court thinks that the work has not been properly investigated and send the matter to two carpenters agreed upon by the parties. Next term the arbitrators report that the accounts have balanced and the Court accepts the award and directs each party to pay half the costs. An action by the same plaintiff against Captain Samuel Anderson had been arbitrated upon by the same two carpenters apparently to the satisfaction of the Court.

Joseph Burton vs. Lewis Nadeau.

Another case of slander. The defendant admits the defamatory words but is not ready for trial. The following term he demands a jury trial and the jury find against him with 5s. (\$1.00) damages.

Jeremiah French vs. George Barnhart.

An action on two promissory notes tried by the Court notwithstanding the Act of the Legislature of Upper Canada, passed the previous year, directing all issues to be tried by jury (two of the Judges, Richard Duncan and John Munro were members of the Legislative Council, so that they could not plead ignorance of the law).

It would seem that Samuel Sherwood and Charles Bennitt were in partnership as Sherwood & Bennitt, and that they gave Barnhart a note for £34 12s. which Barnhart was to give to Messrs. Auldjo & Maitland, well-known merchants of Montreal, that Barnhart did not give it to Auldjo & Maitland but to John Plat, a Blacksmith of Montreal, who was French's agent, with an endorsement over to French. Sherwood & Bennitt offered to pay part but Plat refused to accept, and the note was unpaid. If Sherwood & Bennitt had been promptly sued they could have paid, but became unable. How the other note for £15 11s. 6d. signed by John German, got into the plaintiff's hands does not appear, but it was also endorsed by Barnhart. The two notes were given to settle a judgment French had against Barnhart in the Court of Common Pleas at Montreal.

The defendant, Barnhart, had received a receipt in full for the judgment which the plaintiff claimed was conditional upon his being paid the two notes.

The Court held as a fact that the notes were taken as absolute payment of the debt and not as conditional payment or security which was not enough to dispose of the case in favour of the defendant; then that he was not liable as endorser, there being no Protest or Notice of Dishonour. The first reason alleged indicates some confusion of thought; the third is unnecessary and not based on law.

John Barnhart vs. George Barnhart.

The plaintiff gave a Power of Attorney to a layman to represent him. The Court of Common Pleas of the District of Mecklenburg were very particular in requiring a formal written Power of Attorney to be filed perhaps to prevent repudiation of the agent's acts by the principal; the defendant is allowed time to plead. Next term, the defendant wants the case put off for another term, the plaintiff's new agent objects and the trial proceeds. It turned out that the plaintiff had owned some cattle and sold them to the well-known Col. John Butler of Niagara, that the plaintiff gave to the defendant an order for the price of them on Col. Butler, and that Col. Butler paid the order to the defendant, the defendant admitted getting the order but refused to be sworn. The Court found for the plaintiff for £11 5s. Quebec currency, without requiring strict proof of the payment by Col. Butler.

James Clark vs. John Cafford.

A curious case: Cafford was in possession of part of Lot 20, on the south side of the River au Raisin which was the property of the plaintiff. John Cameron bought the land from the plaintiff but could not get possession from the plaintiff as the defendant held it. Cameron, therefore, called upon the plaintiff to give him the land he had bought. The defendant being summoned to Court offers to give up possession upon being paid for his improvements. This the Court ordered, the amount of the value of the improvements to be determined by arbitration. Next month the plaintiff files a retraxit—probably the land was not worth more than the amount of the award or perhaps the defendant bought Cameron out.

John Empey and Simon Clark vs. Philip Kryslar.

The plaintiffs have a default note on filing a bond for £60. The next term Jacob Farrand appears for them filing his Power of Attorney and obtains judgment for the full amount of the bond.

Farquhar McDonell vs. Martin Walter.

A case of a bond conditioned on the performance of certain work which had been partly done. Following the true rule the plaintiff could not have the full amount of the penalty but only his damage by the breach of the condition. This was referred to arbitration. The arbitration is next term, found not to have been conducted on the proper principle and new arbitrators are appointed. Their award is filed and the defendant is ordered to pay £12 5s., Halifax or Quebec currency.

Robert McGregor vs. John & Michael Quin.

An action on an account of £16 7s. 9½d. John Quin says that he appointed Dobie & Badgely, his agents, to receive the compensation coming to him as United Empire Loyalist, from the Home Government, and that the plaintiff acted for Dobie & Badgely; but that he (John Quin) never received an account from them and he does not know how the accounts stand. McGregor swears that he delivered an account to John Quin and he is ordered to pay £16 1s. 2½d. Michael simply denied liability but he also failed.

Simeon Covill vs. Abel & James Harrington.

Although default was entered against the defendants—on a writ of attachment—a jury was called to try the case November 6, 1793. This was in pursuance of the recent legislation at Newark. The practice was followed in other cases.

Robert McGregor vs. John Bryon.

The Ord. 1785 by Article IV, provided that if one or more of the Judges of the Court of Common Pleas should be satisfied by the affidavit of the plaintiff, his book-keeper, clerk or legal attorney, that the defendant was indebted to the plaintiff in a sum exceeding £10 sterling, and satisfied by the oath of the plaintiff or some other person that he was about to leave the Province, whereby the plaintiff should be deprived of his remedy against him, the Judge or Judges might issue an attachment or *capias* to the Sheriff to hold him to bail or commit him to prison till he gave bail, or if he did not give bail, till two days after judgment. Here the plaintiff, McGregor, obtained leave to file such an affidavit and a writ issued ("Process" means "any proceeding to bring a person before the Court").

Nothing further seems to have been done in this action except noting a default till November, when another default is noted. January 17, 1794, the plaintiff files a *retraxit*.

Charles Bennett vs. Thomas Stratton.

On March 10, 1792, the plaintiff procured a Writ of Attachment which was returned December 10, 1792, but neither party appeared in Court, the same thing happening the next day; the case is dismissed. But they both turn up November 5, 1793, in a new suit with a new Writ of Attachment, and on the following day the defendant asks leave to file a plea to the new case and a "plea in abatement," a dilatory plea to both the new case and the old one. The Court seeing that the pleas had been drawn by an Attorney or Counsel gives the plaintiff an enlargement till the following term so that he may obtain Counsel. The next day the Sheriff returns the Writ in another action between the same parties and the defendant asks for time to get a lawyer. The Court refuses, as this action was on a "Plain Promissory Note." A jury is called and this action is disposed of by a judgment for the plaintiff for £15 Halifax currency, interest and costs. But the former case did not come on till later, January 17, 1794. It stood over for three days—there the plea in abatement was held bad and the defendant compelled to plead. Next day the case went to arbitration. An award was made and either lost or maliciously destroyed by the defendant. This being proved by oral evidence, the award is enforced on a certified copy being filed and proved.

John McKinivan vs. Henry Bolton.

The plaintiff having died, his "widow and relict" is allowed to continue the suit—something wholly unknown to law and wholly irregular. We have not yet got so far even in our common sense method of procedure. We still require an executor or an administrator to take up the case of a deceased.

The matter goes to arbitration. The award is approved (except that the Court will tax the costs). It is adverse to the plaintiff, the plaintiff does not pay and no doubt the defendant obtains execution on his complaint.

William Buell vs. Mary (Mercy) Buell, Executrix and Bemsley Buell, Executor to the Estate of Timothy Buell, Deceased.

This case shows a more regular course. Executors are before the Court and they not appearing the plaintiff asks that they have time given to plead. Not appearing January 17, 1794, a default is entered. April 12, the defendants file a plea in abatement, a dilatory plea (see note 27) which is overruled and then they plead to the merits. On consent, the matter is referred to arbitration named who are to report the following term, but there was no following term for the Court of Common Pleas.

Terence Smith vs. John Man.

This case shows the great care taken by the Court that a litigant should have a chance to explain his case. The plaintiff's agent obtains a default the second day of the sittings. When the defendant does not appear on the first day of the following term, the case is put over, this is done the second time. Then it turns out that the defendant has never been notified of the action (although the Sheriff had returned the Writ November 5, 1793) and the Court adjourns the case for another term. The following term the plaintiff appeared by his agent, the defendant does not, but the defendant could not possibly have had notice and the case stood over again to a term which never arrived.

Simon Covill vs. Joseph Griffin.

Final judgment irregularly entered without a trial by jury.

William Robinson vs. Jacob Carns.

Apparently an action for the price of a mare and a bridle delivered with her—the jury find for the defendant as to the price of the mare (presumably she was really the defendant's own mare or she had been paid for in some way), but for the plaintiff for the bridle, 4s. and the plaintiff has judgment for 4s. and costs.

Simeon Covill vs. Joseph Knapp.

A regular proceeding, notwithstanding default of defendant, the case is tried by a jury. So also in the next case, Covill vs. Shipman; also White vs. Shipman; Paterson vs. Stooks; Livingston vs. Pottiar (or a bond); Livingston vs. Stinger (damages); Scott vs. Barton; Coville vs. White; but not in Anderson vs. Bissell; Peters vs. Watson; White vs. Griffin; Fraser vs. Griffin; Wilkinson & Beikie vs. McCredy; Beikie vs. McCredy; Wilkinson vs. McGregor; Wilkinson vs. Falkner (two cases); Hay vs. Grant (but this was where the defendant admitted liability); Bluard vs. Cain (same remark); Anderson vs. Hope; Covill vs. Sweet (for admitted balance of account).

John Livingston vs. John Pottiar.

An action on a promissory note given to secure the performance of an agreement. This the Court considers equivalent to a bond for the same purpose and a jury is called to assess the damages which it does at £18 Quebec currency.

Simeon Covell vs. Joseph White.

A case where a set-off of accounts seems to have been permitted.

William Scott vs. William Barton, Joseph Barton and John Barton.

A plea in abatement (probably misjoinder) fails and the plaintiff gets "£2 for the Hog and £5 for his damages."

John McGill of Montreal, Merchant, vs. John McDonell, Curator to the Estate of Duncan McDonell, Deceased.

Duncan McDonell had died intestate and John McDonell chosen by the family counsel as Curator of the vacant succession. It was his duty to get in all the personal property of the deceased, pay his debts and divide the remainder amongst those rightfully entitled to receive the same. A creditor, the well-known John McGill of Montreal was not paid and the Curator is summoned to appear in the Court at the house of Richard Loucks in Osnabruck Township, and render an account of his stewardship. The order should not have been made in the Court of Common Pleas at all but in the Prerogative Court, but the Judges were the same and technicalities were not pressed too far in this Court.

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